

2016

The annihilation of memory and silent suffering: inhibiting outrage at the injustice of torture in the War on Terror in Australia

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Brooks, Aloysia, The annihilation of memory and silent suffering: inhibiting outrage at the injustice of torture in the War on Terror in Australia, Doctor of Philosophy thesis, School of Humanities and Social Enquiry, University of Wollongong, 2016. <https://ro.uow.edu.au/theses/4865>

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The Annihilation of Memory and Silent Suffering: Inhibiting Outrage at the Injustice of Torture in the War on Terror in Australia



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Dr. Aloysia Brooks, D.S.W., M.H.R., B.S.W.

This thesis is presented as required for the conferral of the degree:

Doctor of Philosophy

The University of Wollongong

School of Humanities and Social Enquiry

September 2016

Thesis Certification

I, Aloysia Brooks, declare that this thesis, submitted in fulfilment of the requirements for the conferral of the degree Doctor of Philosophy, from the University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. This document has not been submitted for qualifications at any other academic institution.

Aloysia Brooks

Abstract

The War on Terror, initiated by the US Government under George W. Bush, reintroduced torture as an overt tool of the state. The Australian Government was heavily implicated in colluding and covering up the US torture program. Drawing on a model of outrage management, newspaper articles from 2002-2012 reveal extensive evidence that government officials, their agents, and the media, utilised methods that served to reduce outrage over the use of torture in the War on Terror. These tactics not only inhibited outrage, but promoted acceptance of torture as a legitimate security tool in the post 9/11 era.

There is significant evidence that government officials, and a mostly compliant media, engaged in cover-up, either by omitting information, destroying evidence of torture, or failing to call into question statements made by US or Australian officials. There is extensive evidence of dehumanising or devaluing the survivors/victims and their experience including denigrating them as liars, casting them as unreliable sources, or, alternatively, attacking their personal character. Evidence extends to the reinterpretation of events and the way in which language was used to shift focus off torture to concerns about innocence or guilt. Rather than naming torture for what it is, terminology such as ‘abuse’ or ‘mistreatment’ was commonly used throughout the decade of analysis.

The use of official channels to minimise outrage was apparent through the use of official spokespeople, or investigations that only gave the appearance of justice. There was also extensive evidence of the use of intimidation towards whistleblowers and torture survivors in order to prevent them from telling their stories. Those involved in torture were rewarded, commonly through promotion.

These tactics were enabled by networks of individuals, organisations and institutions that carry out ideological, economic, practical or political functions to support the facilitation and cover-up of state-inflicted torture. These networks include shallow governments that deploy misleading political rhetoric related to torture and terrorism, the increased role of militarism and covert operations, and the expansion of the surveillance state. Therefore, challenging torture in the War on Terror requires

broader structural and societal change to eliminate the pillars of support for torture. Removing the structural support for torture may require the dismantling of the entire network through a process of nonviolent resistance.

Table of Contents

List of Figures	8
Acknowledgements	11
Foreword	14
List of Acronyms.....	18
List of Australian and US Administrations	20
Chapter 1: Theoretical Framework & Definitions.....	21
Research Question.....	26
Key Definitions & Terminology	27
Victims and Survivors	27
War on Terror.....	27
Defining Torture	28
Defining Terrorism.....	42
Theoretical Frameworks.....	45
Human Rights.....	45
Othering.....	49
The Backfire Model.....	51
Social Constructions and the Media	56
The Propaganda Model.....	59
Thesis Structure.....	60
Chapter 2: Background to the War on Terror.....	64
The Birth of the ‘War on Terror’	64
The Military Response	67
The Torture Memos and Treatment of ‘Detainees’	70
Guantanamo Bay	77
Interrogation	79
Torture Techniques.....	87
Military Commissions	91
Private Military and Security Companies: Immunity and Contracted Torture.....	102
Joint Special Operations Command	109
The President’s Drone and Assassination Program.....	113
Chapter 3: Australia’s role in the War on Terror	117

Australia's Military Involvement	117
Detention and Treatment of 'Detainees'	119
Torture and Black Sites	121
Abu Ghraib	124
Interrogation	125
The Dark Matter: SAS, 4 Squadron, JSOC and the New Shadow War	132
Australia's Special Air Service.....	134
4 Squadron.....	137
Australia's role in the cover up of US torture, CIA Extraordinary Rendition and unlawful detention of Australian Citizens.....	141
Mamdouh Habib.....	141
David Hicks	142
Joseph Thomas	144
Australia's Counter-Terrorism Legislation	146
Dr. Mohammed Haneef	155
Chapter 4: Methodology & Article Selection.....	158
Methodology	158
Process.....	159
Article Selection.....	163
Chapter 5: Evidence of Inhibiting Outrage at the Injustice of Torture	167
The Cover-up of Torture	168
US Government Cover-up.....	172
Australian Government Reinterpretation that Contributed to Mainstream Cover-up.....	181
Devaluing the person/s who are tortured.....	185
Examples reported in Australian papers	188
Devaluation of Torture Claims	191
Devaluing torture by promoting certain narratives	204
Reinterpretation of Events.....	206
Reinterpretation of Torture	211
Omissions from Guantanamo reports – Confessions under torture and the reinterpretation of events.....	217
Use of Official Channels to Give the Appearance of Justice	221

Intimidating or Rewarding People Involved	237
Rewarding People Involved.....	243
Chapter 6: Underlying & Structural Support for State Torture	257
The Politics of Torture	261
The Politics of Terrorism	265
State Torture as a form of Terrorism.....	270
‘Recreational’ Torture and the Normalisation of Violence	277
Taking the Politics out of Torture	280
Torture as an Instrument of the Deep State: “Imperium in imperium” the State within a State.....	283
Militarism.....	293
Australia and the Expansion of Militarism	301
Surveillance State	307
PSYOPS – The New Frontline	315
Chapter 7: Eradicating State Torture?	321
‘Countermethods’ – Promoting Outrage	321
Exposing Cover-up.....	322
Validate Torture Survivors	325
Emphasise the Injustice	326
Discredit Official Channels & Mobilise Support	327
Resisting Intimidation	329
Empathy	331
Structural Barriers	333
Nonviolent Resistance.....	337
The Global Justice Movement.....	341
Challenges	343
Chapter 8: Conclusion.....	348
Postscript.....	355
References	363

List of Figures

- Figure 1* – McCoy, Shane. (2002a). *The first Camp X-Ray Prisoners, 11 January 2002* [Photograph]. US Department of Defense. Retrieved from http://en.wikipedia.org/wiki/Image:Camp_x-ray_detainees.jpg Page 77
- Figure 2* – US Department of Defense. (2003a). *Abu Ghraib prisoner forced into a stress position, October 17, 2003* [Photograph]. Retrieved from https://commons.wikimedia.org/wiki/File:Abu_Ghraib_50.jpg Page 80
- Figure 3* – US Armed Forces. (2003). *Satar Jabar connected to mock electrical shock devices under threat that stepping down from the box would cause his electrocution at Abu Ghraib* [Photograph]. Retrieved from <https://upload.wikimedia.org/wikipedia/commons/4/4b/AbuGhraibAbuse-standing-on-box.jpg> Page 87
- Figure 4* – US Military. (2004). *Prisoner being terrorised by a military dog at Abu Ghraib in Iraq* [Photograph]. Retrieved from https://commons.wikimedia.org/wiki/File:Abu_Ghraib_56.jpg Page 96
- Figure 5* – US Department of Defense. (2003b). *US Army SSG Ivan Frederick sitting on an Iraqi prisoner* [Photograph]. Retrieved from https://commons.wikimedia.org/wiki/File:Abu_Ghraib_prison_abuse.jpg Page 101
- Figure 6* – Watson Institute for International Studies. (2014). *US troop, Coalition and Contractor levels in Afghanistan and Iraq* [Infographic]. Retrieved 2 September, 2014, from <http://costsofwar.org> Page 102
- Figure 7* – US Military. (2003). *Sexual humiliation, Abu Ghraib* [Photograph]. Retrieved from https://commons.wikimedia.org/wiki/File:Abu_Ghraib_53.jpg Page 124
- Figure 8* – Number of articles with the words ‘torture’ and ‘terror*’ or the phrase ‘War on Terror’ [Graph] Page 163
- Figure 9* – Number of articles containing the words ‘torture’ or ‘mistreatment’ or ‘abuse’ or ‘ill-treatment’ and ‘terror’ or ‘War on Terror’ in the title [Graph] Page 164
- Figure 10* – Number of articles containing the words ‘torture’ or ‘mistreatment’ or ‘abuse’ or ‘ill-treatment’ and ‘terror’ or ‘War on Terror’ [Graph] Page 164
- Figure 11* – Number of articles containing the words ‘torture’, ‘abuse’, ‘mistreatment’ or ‘ill-treatment’ [Graph] Page 165

Figure 12 – Billings, Michael. (2007). *One of the cells set up with 'comfort items' for reporters in Guantanamo, October 26, 2007* [Photograph]. JTF Guantanamo. Retrieved from https://commons.wikimedia.org/wiki/File:Camp_5_cell_and_a_captive%27s_issued_items.JPG Page 170

Figure 13 – A sketch by Thomas V. Curtis, a former Reserve M.P. sergeant, showing how Dilawar was allegedly chained to the ceiling of his cell. In, Golden, Tim. (2005, 20 May). In US Report, Brutal Details of 2 Afghan Inmates' Deaths [Image]. *The New York Times*. Retrieved 6 March 2015 from <http://nytimes.com/2005/05/20/world/asia/in-us-report-brutal-details-of-2-afghan-inmates-deaths.html> Page 175

Figure 14 – US Army. (2003). *United States Army photo from Abu Ghraib prison in Iraq showing Pvt. Lynndie England holding a leash attached to a prisoner collapsed on the floor, known to the guards as "Gus"* [Photograph]. Retrieved from <https://commons.wikimedia.org/wiki/File:Abu-ghraib-leash.jpg> Page 188

Figure 15 – JTF GITMO. (2003). *Omar Khadr pulling his hair in frustration during an interrogation by Canadian officials* [Photograph]. 1 February, 2003. Guantanamo Bay. Retrieved from https://commons.wikimedia.org/wiki/Category:Guantanamo_Bay_detainment_camp_intelligence#/media/File:Omar_Khadrpulling_his_hair_in_frustration_during_an_interrogation_by_Canadian_officials.jpg Page 203

Figure 16 – Ward, R. D. (2004). “Lt. Gen. Anthony Jones gives his insights to reporters during a press conference in the Pentagon on Aug. 25, 2004. Jones was the lead investigator in the Army's probe into abuse of prisoners at the Abu Ghraib prison” [Photograph]. US Department of Defense. Retrieved from https://commons.wikimedia.org/wiki/File:Defense.gov_News_Photo_040825-D-9880W-073.jpg Page 223

Figure 17 – Underlying Systems and Supports for State Inflicted Torture [Table] Page 259-260

Figure 18 – The Elements and Functions of the Deep and Shallow State [Infographic] Page 284

Figure 19 – International Institute for Strategic Studies. (2016). *Top 15 Defence Budgets 2015-2016* [Infographic]. Retrieved from http://iiss.org/-/media/images/publications/the_military_balance/milbal2016/mb_2016_top_15_defence_budgets_2015.jpg?la=en Page 299

Figure 20 – Table Demonstrating the Global Reach of Weapons and Military Technology Suppliers, Lockheed Martin, Boeing and Raytheon [Table] Page 305

Figure 21 – Stockholm International Peace Research Institute (SPIRI). (2016). *Trend Indicator Values of Arms Exports from Australia* [Image]. Retrieved 17 July 2016 from <http://spiri.org/research/armament-and-disarmament/arms-transfers-and-military-spending>

Page 306

Figure 22 – Castro, Samantha. (2014). *Melbourne action at US Embassy organised by the Whistleblowers, Activists & Citizens Alliance (WACA) on the Global Day of Action to Close Guantanamo* [Photograph]. Image reprinted with permission from the author.

Page 328

Figure 23 - Latuff, Carlos. (2013). *Guantanamo* [Painting]. Retrieved from https://commons.wikimedia.org/wiki/Category:Demonstrations_and_protests_against_detentions_at_the_Guantanamo_Bay_detention_camp_held_in_the_United_States#/media/File:Gitmo.png

Page 354

Acknowledgements

I am truly grateful for the many people who have assisted me with this thesis, both professionally and personally. There is no particular order, and each is conveyed with the same gratitude and love.

My heartfelt thanks and gratitude goes to the torture survivors who have shared their stories with me. You are survivors in every sense of the word. I am honoured that you continue to share so much of your journey with me, from torture to recovery. I am always in awe of your strength and resolve not to let this destroy you. The courage, heart and commitment you have to peace with justice, is a continual source of inspiration for me. I wish the next chapter of your lives to be far removed from torture and suffering of your time in US custody.

To the former employees of Guantanamo and other military facilities who shared their personal struggles with me, and the injustice of the events they witnessed. I respect your courage and resolve to speak truth, and not allow intimidation to prevent you from telling the public the truth about torture. Special thanks to Brandon, who I am proud to call my friend. I appreciate everything you have shared with me about your time in Guantanamo over the years, the good and the harrowing. Thanks to those who didn't want to be named, I understand your fear at speaking out, and I am eternally grateful that despite this, you still shared so much with me. I wish you well in your journey of healing.

To my colleagues in the US who continue to raise awareness about Guantanamo and the situation of those in US custody, especially Jeff, Jason, and the WAT crew. I can't wait to finally meet you over there in person (maybe when my name is removed from the 'enemy of the state' watch-list).

Thank you seems insufficient for you Brian. I am so appreciative to have a supervisor like you. I will never forget your weekly phone calls and the personal support you have offered me over the years. Your work is so important and I am so thankful for your help in achieving this goal, and the precious knowledge and experience you have shared. I appreciate the countless hours you have spent listening to me and supporting me through not only the thesis, but my personal situation.

Thank you also to Susan for your ideas and suggestions, and the hours you spent reading my work. I was extremely lucky to have your support, and I am grateful for the wealth of knowledge you have shared with me. I apologise to you both for having to read such traumatic material!

To my friend C. You are truly inspiring, and I will always be here for you and your family. Thank you for listening to my tirades; not many people can understand them the way you do. Thank you for our B&B chats – they helped me more than you know! Most of all, thank you for what you have done for this world.

Thanks to my friend and colleague Sam. You are truly amazing. The world is a much better place because you are in it. Thank you for your commitment to change and your unwavering support in striving for a just world free from torture. I will always remember your friendship and support throughout the years.

Thank you to my mother. Thank you for the flowers that sat on my desk when I was writing such harrowing material, the hot water bottles, and the many meals you prepared me when I was writing and forgot to eat! The kindness and unwavering love that you show to others is such a beautiful quality. Thank you for putting up with my very early morning starts, and my melancholy moods when I was reading some of the material.

Thank you to Mum Naz, I am so grateful for your support over the years, particularly these last few months. I am so fortunate to still have a second home. Your open arms, thoughtfulness towards others, and the tireless work you do for the community are inspirational. Shane, you always bring a smile to my face; I love you deeply and eternally. I wish you a future filled with love, health and contentment – just like we imagined when we were kids.

My heart-felt thanks to Lewina. You have been such an important part of my life for so long, and I am grateful for every moment you spend with me, and the care you provide to me and others. You are truly a special person, and I wish this next chapter of your life brings you health and peace.

To my dearest friend and brother, Mark. You are loved so very much. I appreciate everything you do, and your presence in my life is always honoured. Thank you for

simmering me on the many occasions over the years that have warranted simmering, especially when the pot was boiling over. I don't know what I would ever do without your grace in my life – it is truly dreary without you in Australia. By the way, I can't wait for you to come home and use this as another doorstep.

Erin, it's been seven years, but it feels like yesterday. You still inspire me to live a full life and achieve my goals. I know you are always near. Thank you.

Thank you to my grandfather who is always with me. I feel you watching over me as I sit and write. You have inspired me to think about things differently, and I would not have had the insight to write this without your experiences and the lessons you taught me. I miss you so much, and I was so lucky to have the years I had with you.

Finally, to my little and big heart-beat, you are my family, my all, and I love you both eternally.

Foreword

Everything that we see is a shadow cast by that which we do not see –

Dr. Martin Luther King Jr. (2001, p. 48).

Much of my work as an advocate has revolved around the protection of human rights in an era of increased security. Indeed, whilst there are profoundly personal reasons as to why I felt so strongly about the need to undertake this research, it has more importantly been my professional advocacy work that has served as the catalyst for the research. For over a decade, I have engaged in advocacy with those who have been tortured as a result of the War on Terror. This advocacy has included suing the US Government for documents, and I am evidently the first Australian citizen to sue the CIA, FBI, State Department, Department of Justice and the Department of Defense for documents concerning the US torture program. I have also taken several Australian Government department's to task over their continued secrecy regarding Australian officials involvement in the torture program, and at the time of writing, I have several cases pending against the Department of Prime Minister and Cabinet, and the Department of Defence over documents that I believe should be released in the public interest. This is a battle that I am prepared to fight for as long as it takes – until the truth is known.

On a personal level, I have continued to watch the devastating rebound impact of the events that took place as a consequence of the War on Terror. Whilst the core of the impact has affected the Middle East, it has become global in reach, and subsequently, the majority of my work has revolved around raising awareness about these issues and calling for accountability for the outrages on human dignity that have been perpetrated as a result.

In the course of my advocacy, and my friendships with former prisoners and military personnel, it has become clear that almost everyone has been destroyed because of the path that Western governments chose in the post 9/11 world – the path of torture and retaliatory violence. The intense pain of those who have been tortured and suffered unspeakable injustice is life destroying – they will never be the same again. Families continue to be shattered, nearly two decades after the event. I have also

heard the pain of former Guantanamo Bay guards that, on their return to civilian life, have been plagued by nightmares because of the things they have seen, and sometimes done. Many are affected by substance abuse – some have been imprisoned for taking their trauma out on people they love.

As I reflect on the War on Terror, I am reminded of a passage from an essay entitled ‘war is peace’ by Arundhati Roy.

Nothing can excuse or justify an act of terrorism, whether it is committed by religious fundamentalists, private militia, people’s resistance movements – or whether it’s dressed up as a war of retribution by a recognised government (Roy, 2002, p. xiii).

The violent act that took place on 11 September 2001 was an horrific tragedy and I strongly believe that those responsible should be held to account, just as any other person who is accused of taking the life of another human being. However, this also extends to those who have been responsible for acts of torture and terror perpetrated in response to 9/11. The torture and indiscriminate loss of life, whether on US soil, or in Afghanistan, Iraq or Pakistan, are just as significant, and respecting the inherent dignity and worth of all human beings is imperative, including those who may be accused of taking away the rights of others. Whilst condemning acts of terror is important, condemning acts perpetrated against those who are detained under suspicion of terrorism related offences must also take place with equal passion and vigour.

The apparent controversial nature of calling for the universal respect for humanity is something worth reflecting on as a globalised community. History demonstrates that when society has subjugated certain rights for ‘others’ based on political motivations, it has only ever served to cement greater division, and create the dangerous situation of ‘us’ versus ‘them’. This us-versus-them mindset has led to situations that give rise to serious human rights violations such as torture.

But there is a larger story at play that involves the machinations of the state, and the manifestation of a network of support for state inflicted torture – a system which was created in a way that rewards indignity and non-disclosure and lines the pockets of weapons manufacturers and private military and security companies. This is the real

story behind the exercise of power and the reason why people who were involved in the torture of our fellow human beings have been elevated to the highest levels of executive power.

If history has revealed anything, it is that the result of a continued ‘eye for an eye’ mentality is more anger, resentment and retribution. But political leaders keep doing the same thing and expecting a different result. This is playing out with devastating effect in Iraq, where Islamic State fighters, some of whom were tortured by US agents, are now torturing their Western captives using the same techniques. Rather than see how this has gone full-circle, President Obama vowed to use military might to try and stop the violence; just like his predecessors, he thinks he can bomb the world to peace. An even more scary thought is that they know military intervention is not the answer, yet they continue to do it anyway under the pressure of those who are literally making a killing out of war.

Only when political leaders set an example that includes acts of integrity such as honouring humanity, acknowledging the torture that has taken place in the War on Terror, and holding those responsible to account, can we begin to move through the tangled mess the world now finds itself in. Learning from history and leading by example is an important part of moving towards peace with justice.

It is for these reasons that I have chosen to focus on the issue of torture in the War on Terror. Torture is insidious and its impacts are far-reaching. That is the nature of torture – it is destructive and devastating, and as I will argue, a form of terrorism. The following research examines the way in which authorities and the media use tactics of reducing outrage in relation to torture in the War on Terror, the mechanisms that support those outrage management tactics, and consequently the facilitation and perpetuity of torture. This approach was taken in the hope that the findings will provide a framework for understanding the complexity of torture and the mechanisms that support the perpetration of crimes against humanity – hopefully so the same mistakes are not continuously repeated. In line with this, the thesis is written as a piece of scholarship that can also serve to support advocacy. Its purpose is to raise consciousness around the public representations of torture in Australia and the social and political meanings attached to torture in the Australian context, and inevitably, how they get away with it. It was written to add reflection on Australia’s

involvement in acquiescing and sometimes condoning and covering up the torture of certain individuals and groups, and reflect on the social and political implications of representations of torture and extreme violence, given already established understandings of the root causes of torture. It is hoped that it will contribute to a greater understanding of torture, by naming it and exposing ways in which it is normalised and condoned so as to contribute to torture prevention.

Empathy is key - and understanding is crucial to empathy.

As a final point, it is important to note that I have referred to some personal communications I have engaged in with several former prisoners and military personnel over the years, and I have referred to them by their first names in the thesis. These communications formed part of my advocacy work and were not part of the research. Where I have quoted personal communications they have been provided to the torture survivor or former military personnel referenced for approval. I have also used the first name of people I have spoken to personally because I believe it is important for survivors of torture to be acknowledged by their name, rather than just a surname. Many torture victims and survivors were delegated as numbers, and any personal reference was removed as a tactic of their imprisonment and torture. In addition, it was common for newspaper articles examined as part of this research to solely refer to torture survivors by their surname, usually in the context of denigrating them. Therefore, as a sign of respect, I have used their first name.

List of Acronyms

ACLU	American Civil Liberties Union
ADF	Australian Defence Force
AFP	Australian Federal Police
AI	Amnesty International
ASIS	Australian Security and Intelligence Service
ASIO	Australian Security and Intelligence Organisation
AUMF	Authorisation for the Use of Military Force
BSCT	Behavioural Science Consultation Teams
CAT	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CENTCOM	US Central Command
CIA	US Central Intelligence Agency
DDD	Debility, Dependence, Dread
DFAT	Australian Department of Foreign Affairs and Trade
DoD	US Department of Defense
DoJ	US Department of Justice
FBI	US Federal Bureau of Investigation
FOI	Freedom of Information
GCs	Geneva Conventions
HRW	Human Rights Watch
HUMINT	Human Intelligence Collector

ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IGIS	Inspector General of Intelligence and Security (Australia)
JPRA	Joint Personnel Recovery Agency
JSOC	United States Joint Special Operations Command
JTF	Joint Task Force (In reference to Guantanamo Bay)
KBR	Kellog, Brown and Root
NDAA	US National Defense Authorisation Act
NSA	US National Security Agency
OLC	US Office of Legal Council
PMSC	Private Military and Security Contractor
PSYOPS	Psychological Operations
PUC	Person Under Control
SAS	Special Air Service
SERE	Survival Evasion Resistance Escape
SF	Special Forces
UCMJ	Uniform Code of Military Justice
UDHR	Universal Declaration of Human Rights
UN	United Nations
USOCOM	United States Central Operating Command
US	United States

List of Australian and US Administrations

Australian Prime Ministers

John Howard	Liberal Party	1996 - 2007
Kevin Rudd	Labor Party	2007 - 2010
Julia Gillard	Labor Party	2010 - 2013
Kevin Rudd	Labor Party	2013 - 2013
Tony Abbott	Liberal Party	2013 - 2015
Malcom Turnbull	Liberal Party	2015 -

US Presidents

George W Bush	Republican	2001 - 2009
Barak Obama	Democrat	2009 - 2017

Chapter 1: Theoretical Framework & Definitions¹

They are artists of torture, They are artists of pain and fatigue, They are artists of insults and humiliation...Where is the world to save us from torture? Where is the world to save us from the fire and sadness? – Adnan Latif who died in Camp 5 of Guantanamo Bay on September 8, 2012. Adnan was cleared for release in 2006 and the full circumstances of his death are unknown (as cited in Falkoff, 2007, p. 52.).

This chapter introduces the rationale and overview of the research, and provides the definitions and underlying conceptual frameworks used in the study. The complex and problematic nature of defining torture and terrorism are introduced, including the political and social aspects that may serve to constrain or skew definitions to favour particular interests. The underlying foundations of human rights are examined, as humanitarianism forms the basis of the research approach. This framework is discussed as imperative given that many who are subjected to torture are cast as ‘others’ and deemed as unworthy of rights. The Backfire Model (Martin, 2007), which is sometimes termed as an Outrage Management Model, forms the foundation of analysis, and the five tactics usually employed by officials to stifle outrage at injustice are introduced. Theoretical concepts such as social constructionism (Potter & Wetherell, 1987), denial and outrage (Bandura, 1999; Cohen, 2001), and the Propaganda Model (Herman & Chomsky, 1988) are discussed as key theories integral to the research and analysis. The chapter finally details the structure of the thesis to provide the reader with an overview of issues addressed throughout the research.

Why Research Torture in the War on Terror?

Historically, torture was practiced as an overt tool of the state until the mid-1840s when psychological forms of punishment became more prevalent, particularly techniques that do not leave any physical marks (Rejali, 2007). State-sanctioned practices such as incommunicado detention, sleep deprivation, stress positions and solitary confinement were all examples of this shift towards psychological torture.

¹ Parts of this chapter have been submitted as a part of another degree.

However, the invisibility of torture has failed to result in the decrease of its prevalence. According to reports by leading human rights organisations, torture is still practised in many countries around the world and regrettably, the need for effective torture prevention has not diminished (Human Rights Watch, 2013; UN News Centre, 2014).

The War on Terror led by the United States (US) Government has been integral in the practice, and indeed, justification for torture since the events of September 11 2001 (9/11), particularly in relation to those accused of terrorism related offences. The denigration of human rights and civil liberties has continued in the years since 9/11 and although the torture of those detained as terror suspects is well documented, accountability remains elusive (Danner, 2009).

In August 2014, President Obama admitted that he only banned “*some* [emphasis added] of the extraordinary rendition techniques” (Obama, 2014a, p. 7), and torture is still occurring under the official auspice of the Army Field Manual (Kaye, 2014d).² In addition, the full implementation of the United Nations (UN) *Convention against Torture* 1984 (CAT) is facing sustained resistance, and although Obama signed an executive order prohibiting the torture of prisoners under control of the US Government – including internationally – his Administration considered reversing this decision, which is still used as a basis to block torture cases (Schulberg, 2014b). While Obama’s 2009 Executive Order 13492 called for the closure of Guantanamo Bay, the prison remains open and secret detention and the extraordinary rendition program is also reportedly operating, as sanctioned by the Order (Brooks, 2009; Obama, 2009a).

In 2014, the US Senate Intelligence Committee voted to partially release the executive summary of a report into the CIA ‘interrogation program’ run by the Bush Administration post 9/11, however, the full report, which reportedly contains evidence of CIA black-sites, and evidence that points to members of the Bush Administration misleading the public as to the effectiveness of the program, remains classified (Leopold, 2014c). The CIA has even admitted to removing documents

² When I use double quotation marks throughout the thesis, I am referring to a direct quote. When I use single quotation marks, I am either placing emphasis on a word or phrase, or highlighting a specific concept for ease of reading.

from the US Committee review, hacking the computers of Senate Committee members in order to skew the results of the report, and even impersonating Senate staffers in order to access communications and drafts of the report (Gosztola, 2014a; Mazzetti & Hulse, 2014; Office of the Inspector General, 2014).³ The Intelligence Committee itself was comprised with individuals connected to the CIA and therefore could hardly be seen as independent (Kaye, 2014b). The continued culture of secrecy has resulted in anti-torture whistleblowers such as former CIA employee John Kiriakou, being prosecuted and those who authored and oversaw the secret torture program, remaining unaccountable (Kiriakou, 2014).

On 21 December 2011, the Obama Administration passed the *National Defense Authorisation Act* 2011 (NDAA) (USA), that codified the executive practice of detaining those suspected of terrorism related offences indefinitely (Human Rights Watch, 2013). This has manifested in the continued detention of those held in Guantanamo Bay (Gitmo), without charge, for over a decade and a half. Nine people have now died in Gitmo (Human Rights Watch, 2013) and serious questions still pervade the official narrative surrounding the cause of death of some of the men (Denbeaux, Church, Gallagher, Kirchner, & Wirtshafeter, 2014).⁴ Throughout his terms in office, President Obama continued to prohibit investigations into members of the Bush Administration implicated in torture of those held in US custody, hampering efforts to hold others to account elsewhere in the world such as Egypt and Bahrain (Human Rights Watch, 2013).

Although the Obama Administration had appointed Special Prosecutor John Durham to investigate the torture of one hundred men held in CIA custody, the focus of the investigation was narrowed to only two cases in 2011, and eventually the investigation was formally closed on 30 August 2012, with no charges being laid (Human Rights Watch, 2013, p. 652). The Obama Administration argued that photos and footage of men, women and children tortured in US custody should be kept hidden from the public. For instance, in 2014 a US court ordered the release of 2,100 photos, however, the Obama Administration fought the release (Leopold, 2014d). In

³ Even though this was clearly an attempt for the CIA to obstruct justice by preventing the truth from reaching the public, the Justice Department declined to investigate the matter (Mazzetti & Hulse, 2014).

⁴ When there are more than two authors, I will list them all for the first citation, then et al. for all subsequent.

2014, President Obama justified the use of torture by the CIA, contractors and military personnel, telling the public not to “feel too sanctimonious” considering the pressure they were under post 9/11 (Obama, 2014a).

The extrajudicial assassination of people in countries such as Yemen, Pakistan and Afghanistan, as part of the Obama Administration’s drone program, continues to occur and comprehensive details of the program remain largely secret. Without charge or trial, at least two Australian citizens have now been killed as part of the program, and the Australian Government appears unperturbed (Ludlam, 2014). The role of the Australian Government in the drone program has also been called into question given the use of the Joint Defence Facility at Pine Gap to track the geolocation of radio signals. Investigative journalist Jeremy Scahill, says the Australian Government is “fully aware of the extent to which the US is engaged in an assassination program” (as cited in Dorling, 2014b, p. 1). However, the Australian Government refuses to reveal its involvement.

The Australian Government’s involvement in the US Government’s torture program also remains unaccounted for. In 2013, Australia was named one of fifty-four countries involved in the CIA’s extraordinary rendition program (Open Society Justice Initiative, 2013). There is a host of documented evidence that indicates the Australian Government played a significant role in various conflicts in the War on Terror, not only in a military capacity, but in relation to political support in the form of pro-torture ideology which will be examined in this thesis. In addition, the Australian military, which was involved in waterboarding a woman during the Vietnam War (Burstall, 1990, Elkins, 1996),⁵ has been implicated in a number of occurrences of torture in the War on Terror.

Attitudes towards torture have also taken a disturbing pro-torture direction. Historically, US opinion polls from the early 1940s saw only 2-4 per cent of the population view torture as acceptable, and this increased to 19 per cent in 1945, when some people expressed views that supported the public torture and punishment

⁵ This case was highly publicised in the Australian media in 1968 when the Minister for the Army, Phillip Lynch, told the public that there was not one “scintilla of evidence” of torture (Elkins, 1996). However, an internal Defence Department report found that there was a breach of the *Geneva Conventions* 1949, and other eyewitness accounts corroborated the victim’s testimony (Burstall, 1990).

of Hitler, but did not support torture generally (Miller, Gronke & Rejali, 2014). In line with the emerging human rights movement of the 1970s, 1980s, and 1990s, US polls illustrate that there was little to no support for torture in the general community (Miller, Gronke & Rejali, 2014). These widespread anti-torture viewpoints continued, even under the Bush Administration (Miller, Gronke & Rejali, 2014). However, studies demonstrate the acceptability of torture increased considerably after the election of President Obama in 2009, and some believe this is a result of torture becoming a partisan issue (Gronke, Rejali, Drenguis, Hicks, Miller, Nakayama, 2010). For example, a 2014 poll found that almost 50 per cent of US citizens thought torture was justified in cases where torture would hypothetically protect the public (Amnesty International, 2014). This increased to a pro-torture majority of 58 per cent in 2016 (Kahn, 2016; Pew Research Center, 2016). Similar results are recorded in the Australian context. A 2009 Red Cross study found that 40 per cent of Australians, and 50 per cent of those in the Australian Defence Force, believed that torture was acceptable in war-time if used to elicit important military information (Australian Red Cross, 2009).

Globally, the numbers have also recorded a rise. A recent report into global attitudes towards torture found that around 40 per cent of people believed that torture can be justified in some cases to protect the public (Pew Research Center, 2016).⁶ This was echoed in other studies, which found that people are generally against its use, however, people in countries that experience high levels of political violence, such as sub-Saharan Africa, India and Israel, are more likely to condone torture (BBC World Service, 2006; Pew Research Center, 2016). Various global opinion polls demonstrate the disturbing trend that sees more people now think that torture of those deemed terrorist suspects is acceptable if it is viewed as necessary for a higher moral purpose (Gronke et al., 2010).

The trickle-down effect of torture in the War on Terror is also starting to manifest in troubling ways. Studies have found that techniques utilised during war-time are commonly exported into the domestic sphere, whether in relation to family violence, or returned soldiers who then work in local police stations, as prison guards or as

⁶ Obtaining accurate global figures pre-2001 has been difficult, as most surveys in the mid-1900s focused on human rights and ethics, rather than torture specifically (Hertel, Scruggs & Heidkamp, 2009).

security personnel (Rejali, 2007; Sarson & MacDonald, 2009). Examples of torture techniques used against vulnerable individuals and communities being exported to civilian contexts have already become apparent, including torture techniques used in Guantanamo Bay and Abu Ghraib being exported to European psychiatric institutions and prisons (Vervaeke, 2010).

Despite the many years which have passed since September 11, the need for this research has certainly not diminished given that the War on Terror is far from over and the residual impacts are yet to be completely realised. Therefore, to address the persistence and increased acceptability of torture, it is essential to understand and reflect on the context in which torture has been condoned and carried out since 2001, and what systems have facilitated its use.

Research Question

Accordingly, this thesis examines the way in which authorities, their agents and the media use tactics of reducing outrage in relation to torture in the War on Terror, it examines the mechanisms that support those outrage management tactics, and consequently, how this facilitates and perpetuates torture.

The thesis examines newspaper articles spanning 2002-2012 drawing on the Backfire Model (Martin, 2007) as a framework for analysis, which identifies ways in which those involved in human rights abuses such as torture inhibit outrage at injustice. As explained later in detail, Brian Martin (2007) identified five main tactics authorities employ to limit backfire, these are: covering up events, devaluing targets, reinterpreting events, using official channels to give the appearance of justice and intimidating or rewarding people involved. From this, the primary research question asks:

Is there evidence that indicates authorities and the media use tactics to 'inhibit outrage' at the injustice of torture in the War on Terror in the Australian context?

To answer this, the research examines the political environment and underlying ideology operating in the Australian context, whether there were particular systems or mechanisms that supported outrage management, and whether there was a

correlation between the tactics used and the mechanisms in place. For example, if cover-up was identified as a tactic used by those in authority, the research sought to ascertain what mechanisms were put in place by authorities to support the facilitation and cover-up of torture. Understanding popular narratives, underlying ideology and the broader political environment was integral to answering the primary research question. Hence, the research was conducted in two parts utilising a mixed methodology, the details of which are outlined further in Chapter Four.

Key Definitions & Terminology

Victims and Survivors

It is important to note that those who were tortured as a result of the War on Terror are referred to interchangeably as victims and survivors throughout the thesis. This was applied for several reasons and as a result of many personal conversations and experiences as an advocate over the years. Some people who have been subjected to torture do not like being called victims, considering they survived, and would not like to give perpetrators the satisfaction of knowing they succeeded in destroying their spirit. Despite the continuing challenges, some people have attempted to move forward with their lives and see themselves as survivors rather than victims. However, other survivors have expressed that being referred to as a victim is an important acknowledgement of their suffering which has been sorely lacking in the public realm. Those who have lost their lives as a result of being tortured are referred to as victims. Hence, the terminology victim/survivor is mostly used.

War on Terror

Whilst the terminology of the ‘War on Terror’ is used throughout the thesis, it is certainly not intended to contribute to the legitimacy of a misleading narrative. The reality is that there is no global war. ‘Fighting’ terrorism using the same methods that cause non-state actor terrorism is not a war – it manifests in US-led invasions in carefully chosen countries, a grab for resources and installing political leaders that will be sensitive to US interests. The attacks on the United States in 2001 have been used as an excuse to shamelessly invade other countries, strip their resources, line the pockets of US corporations, and decimate human rights and civil liberties in the process.

In addition, killing other human beings is murder, no matter what the circumstances. In this conceptualisation, calling the present situation a war is like saying that the US Government is leading a war against murder. Murder perpetrated by people/organisations should be brought before a court in accordance with fair trial procedures and sentenced accordingly as any other criminal act would. To treat terrorist acts as special, and call it a 'war', only serves to single-out criminal activity of a certain nature, and reinforce the false political narrative that has led to the torture and death of so many people across the globe.

For the purposes of the thesis, however, the zeitgeist of the 'War on Terror' encapsulates the conflict and national security driven narrative that has pervaded the response to the terrorist attacks in the United States; including the invasion and occupation of Iraq, and the current conflicts and military intervention in Afghanistan, Pakistan, Yemen and elsewhere.

Defining Torture

There are many different perspectives as to what constitutes torture and, as the literature suggests, these are wholly dependent on whom you ask and the context in which you are seeking to define it (Kenny, 2010; Rejali, 2007). The debate over definitions takes place in a range of realms, including the legal (Parliament of the Commonwealth of Australia, 2009), medical (World Medical Association, 1975), philosophical (Miller, 2005), political (Greenberg & Dratel, 2005), and psychological (Kagee & Naidoo, 2004). Narratives surrounding torture are not static – like all things they morph with time and societal change (Foucault, 1969). Context and politics play a large role in seeking to define torture. Indeed, some believe that torture is indefinable and only *describable* because “it is impossible to define real things, such as tables, rivers, kindness or unhappiness, since as part of the real world they can change without becoming something else” (Brecher, 2007, p. 3).

Torture is usually defined in relation to three features: the identity of the torturer (e.g. agent of the state), the purpose of torture (e.g. information gathering), and the means (Kenny, 2010). Some see torture as purely an infliction of physical pain and suffering for judicial purposes (Langbein, 1977; Silverman, 2001) by a state official or an agent of the state (Rejali, 2007). Others take a broader view, which extends to

general suffering or harm that may even be inflicted without the specific intention of torture (Jackman, 2002; Miller, 2005; Wolfendale, 2009). This situation has proven to be problematic, as the lack of agreement and clarity in relation to what exactly constitutes torture has paved the way for actions that are cruel and inhumane, if not torturous, to be sometimes deemed necessary and acceptable (Kenny, 2010).

The Legal Framework

The *Universal Declaration of Human Rights* 1948 (UDHR) unequivocally prohibits torture, and it was formally codified in the *International Covenant on Civil and Political Rights* (ICCPR) in 1966. The prohibition on torture is in the category of *jus cogens* legal regulations; that is, they are non-derogable and subject to universal jurisdiction (Wright-Smith, 2007). The United Nations *Convention against Torture and other Cruel, inhuman and Degrading Treatment or Punishment* 1984 (CAT) defines torture as:

... any act by which severe pain or suffering, *whether physical or mental*, is intentionally inflicted on a person for such *purposes as obtaining from him or a third person information or a confession*, punishing him for an act he or a third person has committed or is suspected of having committed, or *intimidating or coercing him* or a third person, or for any reason based on *discrimination of any kind*, when such pain or suffering is inflicted by or at the *instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions [emphasis added], (para. 1).

The same prohibition on torture is also enshrined in UDHR and the ICCPR, a binding covenant to which Australia is a party. Although not all governments have signed and ratified the CAT, the Australian Government ratified the Convention in 1989 and, as part of its international obligations, several provisions have been enshrined into domestic law, thereby making parts of the Act legally enforceable in Australia. The prohibition against torture in Australia is domestically enshrined in the *Crimes Legislation Amendment Act (Torture and Death Penalty Abolition) Act 2009* (cth). This legislation was passed in response to significant criticism relating to

the narrow interpretation of torture which was apparent in the *Crimes (Torture) Act 1988* (cth), and has now been repealed. Whilst the elements of the offence of torture are the same as the CAT, the legislation still does not include acts that are inclusive of cruel, inhuman or degrading treatment. Instead, the definition of torture now refers to “the deliberate and systematic infliction of severe pain over a period of time” (Commonwealth of Australia, 2010b). The Act states that ‘severe’ indicates a high ‘threshold’ of suffering must be inflicted.

The current Act states that a person commits an offence of torture if the perpetrator:

- (a) Engages in conduct that inflicts severe physical or mental pain or suffering on the person (the victim); and
- (b) The conduct is engaged in:
 - (i) For the purposes of obtaining from the victim or from a third person information or a confession; or
 - (ii) For the purpose of punishing the victim for an act which the victim or a third person has committed or is expected of having committed; or
 - (iii) For the purposes of intimidating or coercing the victim or a third person; or
 - (iv) For a purpose related to a purpose mentioned subparagraph (i), (ii) or (iii); and
- (c) The perpetrator engages in the conduct:
 - (i) In the capacity of a public official; or
 - (ii) Acting in an official capacity; or
 - (iii) Acting at the instigation, or with consent or acquiescence, of a public official or other person acting in an official capacity

(Commonwealth of Australia, 2010b, pp. 3-4).

In addition, the Act also implements a specific crime of torture under the *Commonwealth Criminal Code Act 1995* (cth), one that was missing prior to 2009.

The offence has also been extended to anyone in Australia's jurisdiction, regardless of whether the offence was connected to Australia (Commonwealth of Australia, 2010a). The Australian Government has also extended geographical jurisdiction to include torture committed by a non-Australian citizen outside of Australia, but only with consent of the Commonwealth Attorney-General (Commonwealth of Australia, 2010a). This was coincidentally changed when public debates regarding the torture of Australian citizens in places like Guantanamo Bay arose. None of the provisions in the recently introduced legislation have yet been tested.

Cruel, Inhuman and Degrading Treatment

One of the major criticisms of the current legislation is that it fails to criminalise cruel, inhuman and degrading treatment (Human Rights and Equal Opportunity Commission, 2008). The Committee against Torture's General Comment on Article II points out:

In practice the definitional threshold between cruel, inhuman or degrading treatment or punishment and torture is not clear. The conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention (UN Committee Against Torture [CteeAT], 2008b, para. 3).

Whilst many human rights organisations and legal experts believe that cruel, inhuman and degrading treatment should be criminalised, it remains uncharted territory, even in relation to the *Victorian Human Rights Charter (2006)*(VIC) and the Australian Capital Territory's *Human Rights Act (2004)*(ACT). This means that there is a major gap in human rights protections in Australia.

The European Court of Human Rights was the first to examine the distinction between torture and cruel, inhuman and degrading treatment, in 1978 (*Ireland v The UK*, 1978). The Court examined the 'five techniques' employed by the Northern Irish Royal Ulster Constabulary against members of the Irish Republican Army

(IRA) (Spjut, 1979). These included wall standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink. The Court found that whilst the five techniques did not meet the same threshold of inhumanity associated with torture, they did constitute cruel, inhuman and degrading treatment (Spjut, 1979).

After the Bush Administration's use of these techniques in combination with others, such as waterboarding and the use of attack dogs, the definition of torture was revisited. In the US after September 11, the Bush Administration sanctioned what are now notoriously termed 'enhanced interrogation techniques' to use on the so-called 14 high value detainees in secret CIA custody (Mayer, 2008). Upon investigation of the techniques, the International Committee of the Red Cross (ICRC) noted:

Twelve of the fourteen alleged that they were subjected to systematic physical and/or psychological ill-treatment. This was a consequence of both the treatment and the material conditions which formed part of the interrogation regime, as well as the overall detention regime. This regime was clearly designed to undermine human dignity and to create a sense of futility by inducing, in many cases, severe physical and mental pain and suffering, with the aim of obtaining compliance and extracting information, resulting in exhaustion, depersonalization and dehumanization. The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, *either singly, or in combination, constituted torture* [emphasis added]. In addition, many other elements of the ill-treatment, either singly or in combination, constituted cruel inhuman or degrading treatment (International Committee of the Red Cross [ICRC], 2007, p. 26).

In a general sense, the failure to link torture with cruel, inhuman and degrading treatment, and the refusal to criminalise acts amounting to such, leads to a dubious legal situation that opens the way for misuse. It may explain why practices that amount to torture have been largely ignored in Australian narratives, and are continuing to occur today.

Studies have shown that certain actions can cause even more damage than physical torture, including being held in a life-threatening environment, the deprivation of

basic needs, sexual torture,⁷ psychological manipulation, humiliation, exposure to extreme temperatures, isolation, and forced stress positions (Basoglu, 2009; Reyes, 2007). This being so, acts that do not meet the restrictive legal standard are by no means lesser crimes and certainly do not mean that survivors of those crimes are any less affected.

Indeed, the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* notes that “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person” (United Nations [UN], 1988, para. 20). The principles also interpret cruel, inhuman and degrading treatment as;

...to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him [sic], temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time (UN, 1988, para. 28).

At the same time, it should also be recognised that there must be a line drawn in relation to what can be classified as torture. It would be unhelpful to include everything. This is an extraordinarily complicated and subjective matter that experts have debated for a number of years. In essence however, the legal objective in defining torture is to interpret the CAT with the intended meaning. In effect, this means that whilst case law provides a guide, it is also up to the judge to subjectively interpret the acts which are brought before the court. Consequently, the role of the legal system is to hold individuals and organisations to account who engage in torture, which means that legal definitions are dependent on the intention behind the legal definitions.

⁷ This includes the use of acts of a sexual nature being used to degrade, humiliate or cause pain to the individual; such as a prisoner being forced to wear female underwear on their head or being sexually assaulted with weapons. This definition is inclusive of sexual assault utilised as a weapon of war or acts amounting to torture in the domestic sphere.

The Extension to Non-State Actors

There are striking parallels between torture that occurs in the ‘public’ and ‘private’ domains in terms of strategies, process and resulting trauma, and state acquiescence can occur at different levels (Nowak, 2010, p. 5).

International law clearly states that state parties can be held responsible for the actions of non-state actors on the basis that they did not act with due diligence to prevent or respond to the violation (Ball, 2012).

In addition, the language used in Article 1 of the CAT concerning ‘acquiescence’ clearly extends state obligations into the private sphere (Nowak, 2010). The Former United Nations Special Rapporteur on Torture, Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, argues that “the concept of acquiescence entails a duty for the state to prevent acts of torture in the private sphere and the concept of due diligence should be applied to examine whether states have lived up to their obligations” (Nowak, 2008, para 68).

The *European Convention on Human Rights* holds positive obligations for states to legislate to protect all citizens from torture (Directorate General of Human Rights Council of Europe, 2007). This protection is extended to people who have been subjected to torture by ‘private actors’ in an effort to protect the most vulnerable members of society including children, those detained in prisons and psychiatric facilities and the relatives of the ‘disappeared’.

It is a constant of case law that:

the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (*A. v. The United Kingdom*, 1998).

In addition, the Court held in *A. v. The United Kingdom* (1998) (UK) that:

This judgement by the European Court of Human Rights holds that the United Kingdom and other states—nations that are parties to the European Convention on Human Rights and/or the UN Convention on the Rights of the Child—must provide effective deterrents to ensure that the rights of children under Article 3 of the European Convention on Human Rights to freedom from torture, inhumane, or degrading treatment are not violated by private individuals. This is believed to be relevant to the practice of non-therapeutic circumcision of male children in the United Kingdom and other European nations.

Under human rights law, although state parties, rather than individuals, undertake the responsibility to ‘respect and ensure’ human rights (Alston, Steiner, & Goodman, 2008; Saul, 2008), both state and non-state actors are regulated by the Conventions (Alston et al., 2008). However, the UN Human Rights Council notes that in the duty to ‘ensure’ rights, states must protect individuals from ‘private violations of rights’ (Saul, 2008, p. 32) “in so far as they are amenable to application between private persons or entities” (United Nations Human Rights Council, 2004, p. 2). International law expert, Ben Saul (2008), states that “where a private act is not attributable to the State, the State can only be held responsible for its own failures or omissions” (p. 33).

International law clearly demonstrates that state parties can be held responsible for the actions of non-state actors on the basis that they did not act with due diligence to prevent or respond to the violation (Ball, 2012). The *Committee against Torture’s* General Comment No. 2 regarding the implementation of Article 2 by State parties postulates:

where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-state officials, or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the

Convention for consenting or acquiescing in such impermissible circumstances. (Committee against Torture, 2008, sec. IV, 18)

A growing number of researchers have called on domestic legislation to reflect this (Nowak, 2010; Sarson & MacDonald, 2009; St Vincent, 2011). Indeed, in the Australian context, the definition of torture did not change as a consequence of the detention and interrogation of ‘terror suspects’ as it did in the United States (Greenberg & Dratel, 2005), and holes in the legislation still exist. The Australian Capital Territory and Queensland are the only two Australian states or territories that have specific torture offences, and Queensland is the only state to prohibit torture carried out by non-state actors⁸. There have been several convictions for torture offences in Queensland, including; the torture of a child in *R v R & S, ex parte Attorney-General* (2000), a husband torturing his wife over a six month period in *R v HAC* (2006), and a man who was convicted of the torture of a backpacker in *R v Cowie* (2005).

Overall, legal definitions of torture, both in the international and Australian context are quite narrowly focused and are ambiguous in their wording. This positivist approach, in the strict legal sense, means that many institutional practices that may amount to torture have been excluded from the legislative framework, particularly cruel, inhuman and degrading treatment. The ambiguity of the legislation is also problematic. Indeed, if the legislation in the Australian context was to align with expert opinion, it would require an amendment to existing government policy. In addition, the responsibility of states would be heightened, and there may be cases where the Australian Government is forced to act in politically sensitive matters, such as the treatment of asylum seekers.

Other Conceptualisations

Philosopher Paul Kenny (2010) has sought to provide a unambiguous definition that distinguishes torture from other forms of violence. Kenny defines torture as “the systematic and deliberate infliction of severe pain or suffering on a person over whom the actor has physical control, in order to induce a behavioural response from

⁸ The US also has torture prohibition against non-state actors in two states, Sec 750.85 of the Michigan Penal Code and Sec. 203 of California Criminal Code.

that person” (Kenny, 2010, p. 131). This definition removes the need for ‘specific intent’, which has more recently been used as a way of stifling criminal prosecution, as was demonstrated in the now infamous Jay Bybee memo to US Attorney-General Alberto Gonzalez which stated that for an act to constitute torture “the infliction of pain had to be the defendant’s precise objective” (as cited in Greenberg & Dratel, 2005, p. 174).

The implication of the Yoo and Bybee memos was that an act can only be torture if the actor “has no purpose beyond the infliction of pain” (Kenny, 2010, p. 142). Kenny reflects on the distinction between a sadistic act and torture and notes: “Sadistic acts, in which pain is inflicted to enhance the feeling of power the actor has over his subject, are not themselves torture, but something else, as a behavioural response (other than being in pain) is not sought” (Kenny, 2010, p. 142). Whilst this distinction can be seen as imprecise, the idea of torture as the instrument rather than the goal was an important distinction for Kenny. For example, it may be that a person is tortured (instrument) into publicly providing a false confession (behaviour). Kenny argues then, that an act such as female genital mutilation should not be considered torture because the pain is only “incidental to the ritual” and an “unpleasant side effect” (Kenny, 2010, p. 143). The UN Committee Against Torture, human rights experts and many feminist researchers argue against this conceptualisation, as well as the underpinning cultural relativist foundation (Human Rights Watch, 2013; Miller-Mitchell, 2003, p. 21).

Kenny also posits that distinguishing psychological and physical torture is unwarranted, which is indeed an important argument (Kenny, 2010). Pain, whether physical or psychological, is key to the act of torture, no matter what the purpose of the torture is. The Yoo and Bybee memo specified that for an act to constitute torture, it must be severe pain, “equivalent in intensity to the pain accompanying serious injury, such as organ failure, impairment of bodily function, or even death” (as cited in Greenberg & Dratel, 2005, p. 172). In other words, they theorised that any pain below the threshold of the suffering associated with organ failure would not be classified as torture. This fails to recognise that death is not necessarily painful, especially if you are unconscious.

This concept also assumes that pain can be spoken of and measurable, and indeed some have attempted to theorise this (Collins, Moore, & McQuay, 1997; Melzack & Torgerson, 1971). In her striking book *The Body in Pain*, Elaine Scarry (1985) sees torture as “a process which not only converts but announces the conversation of every conceivable aspect of the event and the environment into an agent of pain” (pp. 27-28). Jean Amery’s description of his experience of torture confirms this approach;⁹ he stated: “[t]he pain was what it was. Beyond that there is nothing to say. Qualities of feeling are as incomparable as they are indescribable. They mark the limit of human capacity of language to communicate” (Amery, 1980, p. 33). The removal of voice is an ensuing consequence of the torture (Scarry, 1985).

To count the physically triggered pain without taking into account the psychological factors is analytically out-dated (Kenny, 2010). The use of psychological techniques, including the threat of subjecting the body to the pain of torture, has been seen as just as effective in producing the intended effect (Kamen, 1997). Therefore, the distinction between physically and psychologically induced pain is problematic in analysing torture.

Power

...takes us deep into that dark realm where eroticism and cruelty cohabit –
empowering the perpetrator, destroying the victim, and enticing the rest of us
– Alfred McCoy describing the juxtaposition of perverse tortures and
political power in Pier Paolo Pasolini’s “Salo” (2012a, p. 113).

Theorists have noted that the exercise of power plays a significant role in the conceptualisation of torture, as torture is often intended to be “world-destroying” (Parry, 2002, p. 150; Scarry, 1985). Cover (1986) notes that torture:

is designed to demonstrate the end of the normative world of the victim – the end of what the victim values, the end of the bonds that constitute the community in which the values are grounded...The torturer and the victim do end up creating their own terrible “world”, but this world derives its meaning

⁹ Jean Amery was subjected to *strappado*, a process whereby the arms are bound together behind the body and raised until they caused severe strain on the joints, or even dislocation.

from being imposed on the ashes of another. The logic of that world is complete domination (pp. 1601, 1603).

Torture, in this sense, is not just about the infliction of pain, but more the domination of the body as an object of loss – in relation to the loss of personal integrity, and being cast out of the sphere of citizenship. Indeed, during the act of torture in the context of interrogation, the individual's body becomes an object of blame – if the individual wants the torture to stop, they must speak, if they do not speak, they are then induced into inflicting pain on themselves by refusing to speak. The act ceases to be about the infliction of pain on the body, but instead a function of power by ascribing blame and reinforcing a complete invisibility of suffering. Assigning the outcast body an entity of punishment, devoid of rights, emphasises the secretive and invisible nature of torture.

Michel Foucault (1991) explores this invisibility as a function of power in detail in his book *Discipline and Punish*. He postulates that the state used ritualistic public displays of brutality, such as torture, in order to reinforce the power of the sovereign. Public displays of torture became a mechanism to exact revenge and punish the individual's body as an object of shame for committing an offence against the sovereign. However, this 'backfired' on the state when the victim became the object of sympathy, and 'torturer' became the object of shame and blame. This led to the state moving towards less visible punishment in the nineteenth century, and the birth of the prison. Foucault argues that this became a more controlled method of punishment reinforcing the invisibility of suffering – "the condemned man is no longer to be seen" (Foucault, 1991, p. 13).

Torture then becomes a way of overcoming the vulnerability of the state by removing and silencing any threats to its power, or the social order (Parry, 2002). Indeed, Parry (2002) argues that, at times when the social order is threatened by people seen as 'outsiders' or 'subordinates', torture may function as a 'collective assertion' of power (p. 152). Torture of the body becomes an expression of the

tactical and scientific use of power – the infliction of pain is the strategy (Foucault, 1991).¹⁰

This is why the definition of torture is so important. If the function of torture is to suppress and silence through the exercise of power, and it is carried out in secret, using methods that do not leave any physical scars – or methods that do not meet the legislatively defined threshold of torture – this adds yet another layer of invisibility for the victim/survivor. This extends to the use of language and the way that this contributes to the exercise of power (Foucault, 1991). Indeed, the removal of torture from community narratives reinforces the lack of visibility of the issue of torture; for example, calling acts amounting to torture ‘abuse’, or ‘enhanced interrogation techniques’, or minimising torture, contributes to this silence. Consequently, the inclusion of acts amounting to cruel, inhuman or degrading treatment, or torture that does not leave physical scarring, becomes crucial in defining and conceptualising torture to address the exercise of power. Naming torture when it occurs becomes extremely important. This phenomenon has been particularly apparent in the context of the War on Terror, which will be explored in later chapters.

Holistic Torture Definition

The Torture Abolition and Survivors Support Coalition International, provides a detailed definition of torture which includes techniques previously labelled as cruel, inhuman and degrading treatment.¹¹ They define physical torture as:

Any action or technique, or combination that would result in severe physical pain when inflicted upon a human being. Severe physical pain means a level of pain that a person would not voluntarily accept for himself or herself. Physical torture includes but is not limited to the following: electric shock, near asphyxiation, rape or sexual abuse, burning, beatings, stress positions or dog attacks (Torture Abolition and Survivors Support Coalition International [TASSCI], n.d., p. 1).

¹⁰ It should be noted that Foucault does not see power as a thing that can be possessed; rather, torture becomes the exercise of power (Foucault, 1991, p. 26).

¹¹ This definition encapsulates a more contemporary understanding of torture rather than the traditional legal definitions because the CAT and UDHR have been criticised as being Eurocentric by advocating vested Western interests and being so rigid and do not take into account societal change or growth.

And psychological torture as:

Any action or technique, or any combination thereof, which might result in severe mental trauma or harm when inflicted upon a human being. This includes but is not limited to the following: Death threat or threats of immediate and severe physical pain, mock executions, rape or sexual abuse, extended disruption of food and sleep, extended solitary confinement, extended sensory deprivation, extended sensory disruption or overload, use of hallucinogenic or other mentally disruptive drugs, threats against family members, secret detention or "disappearances" of a loved one, forced observance, by hearing or watching, of the mental and/or physical torture or murder of another or forcible participation in the mental or physical torture of others. Severe mental trauma or harm means a level of fear or trauma that a person would not voluntarily accept for himself or herself, or which results in prolonged mental suffering afterwards (TASSCI, n.d., p. 2).

This thesis draws on the above conceptualisation of torture to contend that torture is the *systematic infliction of severe pain or suffering on another person over whom the person has effective control*. This also encapsulates the deliberate denial of care, such as leaving a person in isolation, withholding food, water or pain relief. In addition, as outlined in the CAT, acts amounting to cruel, inhuman and degrading treatment are usually those actions which lead to torture, if not amount to torture themselves. Therefore, when torture is referred to throughout this thesis, it inclusively refers to acts that amount to cruel, inhuman and degrading treatment.

This holistic definition also embraces a less positivist approach to torture by affirming that the underlying function of torture relates to the exertion of power and domination over the victim/survivor, whether at the hands of the state, or another person. It acknowledges that the power exerted by the state, or a person who is engaging in torture (whether through action or inaction), is world destroying. This conceptualisation is important as it addresses the way in which the exertion of power through the use of torture automatically ascribes blame to victim/survivor. Hence there is no reference to a requirement of a behavioural response or specific intent as outlined in international conventions and/or domestic legislation. As previously explained, many definitions of torture require an outcome of some kind, such as a

‘confession’. This places the focus on the action or the omission of action, which in itself may amount to torture, and ignores the use of power.

Defining Terrorism

Whilst terrorist violence has been framed in the contemporary narrative as the ‘worst’ form of violence, it is worthwhile pointing out that every form of violence is potentially terror-inspiring to its victim (Bassiouni, 1988). Defining terrorism is contentious, and whole theses have been written in an attempt to define what constitutes terrorism. This disarray in the literature seems to confirm the old adage that ‘one man’s terrorist is another man’s freedom fighter’. One need only look at recent history to see examples where calling someone a terrorist has been used to stifle support for revolutionary thought and ideas, and prevent opposition to oppressive governments. Nelson Mandela was labelled a terrorist for opposing apartheid in South Africa, and was imprisoned for many years because of his ‘terrorist’ related activity (Mandela, 1994). In many Latin American and Middle Eastern countries, state-sponsored terrorism has been a greater cause of death and destruction than any anti-state terrorist activity. Defining terrorism is intensely political and largely dependent on the narrative surrounding terrorism in the particular context.

Terrorism, as a political narrative, entered the public realm in the late eighteenth century relating to the systematic way that the Jacobins purportedly intimidated and repressed opponents during the French Revolution (Saul, 2008).¹² International law expert, Ben Saul (2008) notes that ideas of terrorism as an instrument of state control and oppression remained the norm until the end of the Second World War. Terrorism only became referred to as an act perpetrated by non-state actors in the late nineteenth century as a result of revolutionaries in tsarist Russia (Koufa, 2001). Since that time, the politically and ideologically loaded term has taken on new meanings depending on the social and political context. The difficulties in defining terrorism, come with the fact that it is difficult to distinguish terrorism from other forms of politically motivated violence such as riots, assassinations and guerrilla

¹² Ironically the opponents of the revolution were labelled as anarchists.

warfare (Saul, 2008). Legal definitions of terrorism differ jurisdictionally and appear to be dependent on the politics of those defining it.

Whilst there is no distinct crime of terrorism under international law, there are prohibitions on conduct that comprises terrorist acts, such as war crimes and crimes against humanity, which are codified in international humanitarian law and human rights law (Saul, 2008). Conduct that infringes on basic human rights outlined in the UDHR is prohibited under international law, and many UN resolutions have stated that terrorism is a threat to civil and political rights, as well as economic, social and cultural rights (Saul, 2008).

Since the events of 9/11, and the subsequent military response, there has been a significant push to find a common international definition. Indeed, terrorism was only defined by law in Australia after this event (Burton, McGarrity, & Williams, 2013). Under Australian law, terrorist crimes are distinguished by a few key features, including motivation and scale. For an act to constitute a terrorism, it must have the intention of: 1. “advancing a political, religious or ideological cause”, and 2. “coercing, or influencing by intimidation” the government (Australia or a foreign government), or “intimidating the public” (Lynch & Williams, 2006, p. 15).

In Australia, for a group to be declared a terrorist organisation it must be either proven in a court that the organisation is “directly or indirectly engaged in, preparing, planning, assisting, or fostering” a terrorist act, or, an organisation can be proscribed by the federal attorney-general (Lynch & Williams, 2006, p. 21). It is worthy of note that a court may declare an organisation a terrorist organisation without the organisation having carried out any terrorist attack. Indeed, the proscription of a terrorist group has been decisively political, and there have been controversies surrounding the Australian Government’s decision to call some groups terrorists for political purposes, then change their minds when convenient.¹³

¹³ This was the case in relation to deeming the Kurdistan Workers Party (PKK) a terrorist organisation, and yet providing them arms to fight ISIS in Northern Iraq (Pollard, 2014). Similarly, when the Howard Government proscribed Lashkar e-Toiba as a terrorist group, questions were raised considering that the group had condemned al-Qaeda and violence against Western forces, and was wholly concerned with the conflict in Kashmir (Butler, 2003). Some believe that this had more to do with the detention of David Hicks in Guantanamo Bay than any threat to the Australian people. The political nature of the proscription of a terrorist group is fraught with difficulties.

The Australian definition does appear to include acts of war, for example, the bombing of civilian populations in Afghanistan and Iraq would likely be covered as acts of terrorism under this legislation (Lynch & Williams, 2006). However, this has never been tested in Australian court and, as is common in cases of terrorism perpetrated by Northern liberal democratic states, the legislation has only been used against individuals, not state-sponsored activities (Blakeley, 2009). Terrorism is used by states both internally and across borders for a number of reasons, such as maintaining order or quelling political dissent. This state terrorism has manifested in many ways including illegal detention, disappearances, torture and assassination (Blakeley, 2009). This includes violations of the *Geneva Conventions* 1949 (GCs), including the torture of combatants, the targeting of civilians, assassination, using specific types of weaponry (e.g. chemical weapons), unlawful detention and kidnappings.

Ruth Blakeley (2009) defines state terrorism as a “threat or act of violence by agents of the state that is intended to induce extreme fear in a target audience, so that they are forced to consider changing their behaviour in some way” (p. 1). The core concern here is that the act of violence was intended to cause intimidation to individuals beyond those directly impacted in an attempt to change behaviour (Blakeley, 2009, p. 36). Although evidence clearly demonstrates that state terrorism causes many more deaths than non-state terrorism does, terrorist acts perpetrated by the state are given far less attention in the mainstream media. The entrenched notion of ‘legitimate’ violence perpetrated by the state has much to do with this and scholars have argued about definitions of terrorism because of the assumed distinction between ‘legitimate’ and ‘illegitimate’ violence.

The debate also extends to the assumptions around who constitutes a victim. In this conceptualisation, complying with the GCs provides for legitimate acts of violence to be perpetrated against an individual or group, thereby differentiating between innocent civilians and combatants. This has caused much scholarly dialogue, particularly as this then assumes that there are some acts of violence that can be perpetrated ‘innocently’ on some individuals or groups by the state. The dichotomisation of ‘innocents’ compared to ‘guilty parties’ becomes problematic as it then attributes worth to only some lives and further entrenches the legitimacy of

violence in the community. Indeed, Rudolf Rummell (1994) estimates that between 170-200 million civilian deaths are attributable to state instigated mass murder, forcible starvations and genocide in the twentieth century alone (Blakeley, 2009, p. 1).¹⁴ Despite the massive toll that state sponsored violence has taken on civilian populations, they are rarely held to account for the death, destruction, and indeed terror, caused to these communities, proving a disparity in the application of terrorism related prohibitions. These arguments are further explored in Chapter Six.

Theoretical Frameworks

Human Rights¹⁵

Conceptualisations of ‘human rights’ have been critiqued and philosophised for decades by authors from political, philosophical and legal fields (Sen, 2004; Turner, 1993). The central principle of modern conceptions of human rights is that by nature of being born human, a person has the inherent right to certain protections, such as the right to life, and the right to be free from torture, cruel, inhuman and degrading treatment (UN, 1948). Every person has rights by nature of being human, and the indivisibility of rights means that no hierarchy exists. This means that by virtue of being human, a person has as much right to be free from torture, as any other enshrined right.

In essence, human rights are based on moral limitations that are placed on individual and institutional behaviour to protect individuals and communities (Nozic, 1975). The most commonly used definition of rights is enshrined in the UDHR. Although the UDHR was drafted in the US, the values and philosophical underpinnings of the enshrined rights stretch far back into history from all over the world and the concepts have been taken from religious, cultural and philosophical texts that were drafted long before there was ever a United Nations (Callaway, 2007; Smith, 2007). However, as will be discussed further into the thesis, they have been appropriated by Western nations in the current structure.

¹⁴ These figures are higher than other estimates.

¹⁵ A whole thesis could delve into debates around human rights, however, this brief introduction is intended to provide the reader with an idea of some of the human rights narratives and the approach taken in the thesis.

More liberal approaches to human rights argue that the principles outlined in the UDHR must not be seen as 'set in stone' (Briskman & Nipperess, 2009; Ife, 2008b). They argue that human rights are not static, but are constructed and ever-changing depending on the cultural, social and political context (Briskman, 2008; Ife, 2008b). Jim Ife (2008), in particular, argues that human rights are discursive and constructed through human interaction in ongoing discussions about what it means to have a shared humanity. These views point out that formal documents form only one aspect of the human rights discourse, and that discourse is never bound by words (Derrida, 1976). Whilst positivist notions of rights have been marred with controversy, these more liberal approaches have also resulted in significant problems due to the lack of clarity around definitions as a result of social change and the varying political environment.

Despite these differing approaches, one of the core components of the human rights framework is the notion of the universality and indivisibility of human rights (United Nations General Assembly, 1993). In this framework, when examining issues relating to torture through a human rights paradigm, the inherent dignity and worth of every person forms a strong foundation for analysis, and the indivisibility and universal application of rights follows. This is an important framework when studying torture, as torture is most likely to occur to people who are marginalised and considered 'deviant' by the general community (Office of the United Nations High Commissioner for Human Rights, Association for the Prevention of Torture, & Asia Pacific Forum on National Human Rights Institutions, 2010).

Taking a universal approach to rights does not automatically lead to an acceptance of the way human rights have been used, applied, or have failed to be applied, in the current structure. There are significantly important debates surrounding the application of rights, including the unequal application of rights, Western-focused notions of rights, gender-based interpretations, and cultural relativism. It is acknowledged that human rights are often used as a political tool by powerful individuals and governments to exert power over marginalised individuals and communities. For example, Jacques Derrida (2001) notes that accusations of crimes against humanity such as torture are used by powerful nations "often in the name of human rights", and are only employed "where it is 'possible' (physically, militarily,

economically), that is to say always imposed on small, relatively weak States by powerful States” (p. 52). Christina Schwenkel (2009) uses the example of US intervention in Vietnam to argue that “the neoliberal state enacts a language of rights to position itself as a guarantor of individual freedoms, such as freedom of choice, property rights, free market and the right to prosperity” (p. 31). Similarly, the US Government used the human rights narrative to engage in the 2003 Iraq invasion (Bricmont, 2006). In this sense, human rights narratives are deployed not out of a sense of common humanity but as a function of empire for states that frame themselves as requiring “saving” from “savage” others (Derrida, 2001, p. 52).

These issues draw on debates concerning the exercise of power and the subsequent manifestation of rights. In *Leviathan*, Thomas Hobbes (2016) defines power as the “present means to secure the future”; in effect, power is then the means by which a human being can secure future security, and therefore rights (as cited in Birmingham, 2006, p. 38). Hobbes (2016) argues that self-interest and individuality are the driving force, excluding the idea of humanity, an exclusion that political philosopher, Hannah Arendt (1952) has argued had a disastrous effect in the nineteenth century (Birmingham, 2006). Arendt (1952) postulates that humanity is the sole constituting basis for human rights, and therefore provides the basis of international law (Birmingham, 2006, p. 38).

Whilst humanity forms the basis of rights, Arendt (1952) argues that rights must be politically secured, rather than merely proclaimed. In *Origins*, Arendt states:

The insane manufacture of corpses is preceded by the historically and politically intelligible preparation of living corpses. The impetus, and what is more important, the silent consent to such unprecedented conditions are the products of those events which in a period of political disintegration suddenly and unexpectedly made hundreds of thousands of human beings homeless, stateless, outlawed and unwanted, while millions of human beings were made economically superfluous and socially burdensome by unemployment. This in turn could only happen because the Rights of Man, which had never been philosophically established but merely formulated, which have never been

politically secured but merely proclaimed, have, in their traditional form, lost all validity (Arendt, 1952, p. 446).

Arendt argues that philosophically establishing and politically securing rights “requires a new law of humanity” whereby “the right to have rights or the right of every individual to belong to humanity should be guaranteed by humanity itself” (as cited in Birmingham, 2006, pp. 5-6). One cannot rely then on the state to secure rights, because, as Hobbes (2016) describes, the individual fundamental interest is to secure power to obtain future security. So too, Arendt posits that the sovereign power of the commonwealth is made up of “private individuals solely interested in the desire for power; it embodies the sum total of private interests” (as cited in Birmingham, 2006, p. 39). Therefore, it is only through “radical reformulation of power, freedom, and the public space” that it is possible to ‘sever human rights from sovereign agency and sovereign state power’” (as cited in Birmingham, 2006, p. 40).

Despite the importance of issues relating to the interpretation and application of rights, and the way in which human rights have been used to further imperialistic aims and political agendas, it is important that the UDHR be acknowledged as the foundation of human rights definitions in relation to this research to the extent that it provides a basis to define rights. While acknowledging the cultural and imperialist notion of rights in the Western context, this does not mean their application has to be constrained by Western, cultural or gender-based interpretations. Rather, the underlying humanitarian values that form the basis of human rights which stem from culturally diverse communities and community based philosophies are instead acknowledged, and the UDHR is seen as a manifestation of these inclusive and broad based rights.

Human rights frameworks also take into account power, inequality, domination and politics as central elements to the area of research, and examine the context and meaning that is given to social problems (Finn & Jacobson, 2003; Ife, 1997, 2008b). They also consider the philosophical, historical, legal, anthropological contexts of issues (Briskman & Fiske, 2008). This is important when researching issues such as torture in the War on Terror given its political nature and the historical aspects that have impacted on the narrative. It is also essential considering that the predominant

targets of torture in the War on Terror are men of Islamic faith from Middle Eastern backgrounds.

Jim Ife (2008b) notes that understanding and investigating the structures and powerful discourses that reinforce oppression and thereby prevent people from reaching their 'full humanity' is an essential lens. The issue of structure is therefore core in the analysis of the material. Indeed, examining issues from a human rights approach also requires an acceptance of the issue as a political problem rather than a 'private issue' (Mills, 1970). This draws on the notion that a social issue only becomes a public 'problem' when it is perceived as one in the public realm. Hence the importance of research seeking to understand whether there is any evidence of methods used to inhibit outrage and the structures that support the tactics. This also extends to whether human rights abuses such as torture are seen as structurally embedded or institutionally condoned violence, and therefore an individual solution is inadequate. Notions of whether the issue is a public problem or private issue are therefore central to the examination of torture in the War on Terror, as the way in which torture is defined and the narrative surrounding torture becomes a driving force as to whether it is seen as an issue that needs to be addressed.

Accordingly, the human rights framework utilised in this research holds that all human beings are worthy of respect, dignity and of being free from torture and conditions that give rise to torture, and that this is applied universally.

Othering

The concept of othering can be traced back to the philosophies of Georg Wilhelm Friedrich Hegel (1998) and Jean-Paul Sartre (1956), but the term is most commonly attributed to cultural critic Edward Said (1979), who discussed the use of othering by imperialist Western governments to dichotomise the East through the process he termed as Orientalism. Gavin Fairbairn (2009) notes that the way in which an individual or group is represented publicly has a direct bearing on the public response and whether, in fact, an action is seen as a human rights abuse. This theoretical concept is important throughout the thesis as othering plays an important role in the development of the identity of the individual and societies, and consequently perception of the significance of torture. In the same way that notions

of public and private ‘problems’ can have a significant impact on the way in which issues are defined and responded to, the way in which individuals or certain groups of people are represented in the mainstream can also lead to the creation of ‘the other’ (Fairbairn, 2009). As aforementioned, torture is more commonly perpetrated against marginalised and vulnerable individuals or social groups – whether this is on the basis of political opinions, race, religion or sexual preference. Creating ‘the other’ then becomes an important and integral tool in the participation of acts such as torture, as it contributes to what Bandura (2002) termed moral disintegration. Put simply, it is easier for human beings to engage in acts that inflict suffering on other beings if they are viewed as different from the mainstream social group, or those deemed as less than human (Bandura, 2006).

This conceptualisation of otherness stems largely from psychological theories where researchers contend that human beings need to create an ‘other’ in order to identify themselves, and in doing so, create groups that are ‘not us’ (Rowe, 1985). It is this process of othering that Fairbairn (2009) explores as one reason why people can torture or kill. For example, scholars have examined the types of training that those in armies and defence forces around the world must go through in order for them to be effective combatants and ‘efficient’ at killing (Bourke, 1999; Zimbardo, 2007). The element of dehumanisation and separating the ‘combatants’ or ‘terrorists’ from the civilian population is an important distinction made in order to separate those who it becomes acceptable to kill or torture, from those it is not (McAlister, Bandura, & Owen, 2006; Zimbardo, 2007). The level of perception as to whether the person being killed or tortured is ‘guilty’, and thus whether sympathy can be harnessed or suppressed plays a large role in this (Fairbairn, 2009).

The nature of evil actions, such as torture and genocide have also been explained as being a result of the depersonalisation, or as Arendt (1952) stated, the banality of evil. It is not the pathology of a person that causes evil acts, but the way that another can be depersonalised and seen as a separate entity to the person or group carrying out the torture or killing. However, studies have now shown that those committing acts of evil are not as thoughtless as Arendt suggests (Reicher, Haslam, & Miller, 2014). Researchers now contend that people are aware of what they are doing, however, they believe what they are doing is the right thing to do (Reicher et al.,

2014). This comes from promoting identification with the cause. In the context of the War on Terror this meant, amongst other things, promoting nationalism to defeat an evil threat to ‘our’ civilisation, which even now is manifesting in the military actions against the Islamic State in Iraq and Syria.

This phenomenon was explored by Judith Butler (2012) in her book *Frames of War*. Butler (2012) recounts the way that communities in Iraq and Afghanistan were cast as unworthy of grief by US officials and the media. Butler (2012) posits that the reason why images and narratives are controlled so extensively throughout times of violence is because of the importance of framing the lives of those killed or tortured as part of the instruments of war; their very bodies become pure vessels of attack (p.xxix). Thus, life is cast as a divide between those who are considered precious and ‘grievable’, and those who form part of the instruments of war – they become merely collateral damage (Butler, 2012).

The conceptualisation of ‘grievable’ lives is also supported by research into the effects of watching graphic torture scenes. A 2014 study found that after students watched the television program ‘24’, which depicted torture as effective, their level of support for torture increased and they even signed a petition in support of their stated beliefs (Kearns & Young, 2014). Watching torture recreationally functioned as a mechanism to cast those tortured as fictional characters, devoid of humanity and therefore unworthy of rights. Viewers became desensitised to their humanity.

Therefore, because of the emotions often attached to the issue of torture in a post 9/11 context, particularly when it involves those who have been accused of terrorist or other violent activity and cast as pariahs, a universalist, inclusive and progressive humanitarian foundation is important for research and analysis.

The Backfire Model

The Backfire Model (Martin, 2007) forms core of the analysis. The background to the Backfire Model lies in the work of veteran nonviolent advocate Gene Sharp (1973), who observed that when protestors were targeted by authorities, the actions of authorities sometimes backfired on them, and the protestors were granted greater support from the broader community. Sharp (1973) characterised this phenomenon

as jujitsu – a term used in unarmed combat where the perpetrator’s energy is used against them.

The Backfire Model was subsequently developed by Brian Martin (2007, 2012a) as a tool for activists to oppose injustice after he observed that this backfire did not always occur. So, he created a framework of tactics that attackers use to minimise outrage at the injustice. Martin (2007) notes that when those who hold power perpetrate an injustice, whether they be individuals, corporations or governments, they are usually able to get away with it *because* they engage in the inhibition of outrage. When this inhibition fails, the act can backfire on them. The model is therefore sometimes referred to as the Outrage Management Model (McDonald, Graham & Martin, 2010).

Powerful entities can get away with atrocities, because of their power. Martin (2007) observed that certain events, such as the beating of Rodney King, had particular features that resulted in backfire; there was an act of injustice, the act/s received extensive media coverage, and the events ‘backfired’ on those involved (Martin, 2005). Backfire can involve adverse public opinion towards the perpetrators or a ‘blowback’ (Martin, 2007, p. 3). However, there must be the perception in the broader community that an injustice has occurred and the awareness must be conveyed to a significant audience. Indeed, backfire indicates that the actions the perpetrator took must be counterproductive to their goals.

There are two conditions for backfire to occur; firstly, the action has to be perceived as unjust, unfair, excessive or disproportional and secondly, information about the injustice has to be communicated to relevant audiences (Martin, 2007). However, backfire against the powerful is unusual, and Martin (2012b) states that there are a number of steps that perceived perpetrators of injustice go through to inhibit outrage at the acts they have perpetrated.

The five methods for inhibiting outrage over injustice include:

1. Cover up the action – this may involve the cover-up of acts that are committed out of the public eye, hiding or destroying evidence, hidden attacks, using proxies (e.g. private contractors), and censorship.

2. Devalue the target – this element concerns lowering people’s view of the victim or group of people. It may entail labelling the victim, personal attacks, finding or creating dirt. This correlates with theories around ‘othering’ which were just discussed.
 3. Reinterpret what happened – some of the facts may be accepted, but they are reinterpreted to mean something entirely different. Martin notes that it could be a perpetrator denying the act occurred, denying knowledge of the act, denying the act meant what others thought it did, or denying the intention to cause the act. This would include lies about the event or actions of certain officials, minimising consequences, passing the blame or framing the event in a particular way.
 4. Use official channels to give the appearance of justice – Martin notes that official channels often give spurious legitimacy to injustice; this could be opening an investigation that has a limited scope, lacks independence and resources, or appoints ‘experts’ that may be influenced by those employing them. Courts may only look at legal technicalities rather than the merits or morals of the act/s. It also may entail an inquiry where the outcome would be censored.
 5. Intimidate or reward people involved – here Martin refers to people knowing that the act occurred, but they are unwilling to do anything about it because of the ramifications. This may involve intimidation against targets, witnesses and campaigners. It also may involve incentives for acquiescence.
- (Martin, 2007, pp. 4-5; 2012b, p. 8).

To counter these strategies, the Backfire Model suggests the use of ‘countermethods’ which include: exposing information about the injustice; validating the targets of injustice; interpreting the events as unjust; mobilizing public support and either avoiding or discrediting official channels; and refusing to be intimidated and exposing the intimidation (Martin, 2007, p. 7).

For blowback against the perpetrator/s to occur, the timing and communication of the message has to be carried out in a particular way. Timing in this sense is concerned with the media coverage, whether there has been sufficient time delegated to the story, and whether the audience is receptive to hearing about the injustice. For

example, the death of Michael Jackson in 2009 saturated the media landscape and overshadowed the coverage of the killing of civilians in Afghanistan (Engelhardt, 2009), demonstrating the importance of timing and receptiveness in the general community.

The Backfire Model (Martin, 2007) has been used to examine injustice in many contexts including studies relating to the genocide that occurred in Rwanda (Martin, 2014), the treatment of asylum seekers and refugees (Herd, 2006a; 2006b), corporate disasters (Engel & Martin, 2006), climate change (Hodder, 2011), corruption (Martin, 2012), defamation (Martin & Gray, 2006), censorship (Jansen & Martin, 2003), and other state-sanctioned violence such as the attack of Fallujah in Iraq, Afghanistan, injustice that occurs in war time (Riddick, 2012; 2013), and massacres (Gray & Martin, 2008).

Torture is a recognised case study for the Outrage Management Model, simply because the tactics used by authorities are so blatant. For example, the model was used to examine the outrage management tactics utilised by the US Government when the Abu Ghraib photos were released in 2004 (Martin, 2007). The model was also applied to the technologies of torture, such as those weapons employed for use in inflicting pain on asylum seekers and protestors including, electro shock weapons, Tasers, acoustic devices, armed robots and lasers (Martin & Wright, 2006; 2003). In these cases, the model was employed to provide tactics for activists to promote countershock and long term policy change strategies in order to deny states access to tools of torture (Martin & Wright, 2003).

The theoretical underpinnings of outrage are also worth mentioning here. Outrage in this model refers to members of the audience perceiving the injustice and some of them wanting to do something about it.¹⁶ Many theorists have delved into the conditions that are almost a pre-requisite to the feeling of injustice, and subsequently wanting to take action. Martin (2007) believes that most people are concerned about injustice and are willing to take action to promote justice (p. 180). The 'just world' theory posits that those concerned about justice believe that the world is inherently just and that ultimately, people get their just deserts (Martin, 2007). This outlook is

¹⁶ Hessel (2012) states that one must reflect on outrage and it must be tempered by rationality and knowledge otherwise it can be dangerous if based on hatred.

fraught with problems in relation to torture because it leads people to believe that if someone is tortured, they deserve to be. Indeed, one of methods employed by authorities has been to shift focus off the torture and blame the survivor/victim by alleging they are terrorists who got what they deserve.

Outrage has been described as anger directed outwards, which sometimes leads to action (Martin, 2007). One of the main areas of research into outrage and wanting to act on an injustice has been at the behest of psychologically based disciplines. Psychologists have examined why some people are unconcerned with justice, and are more susceptible to the methods of inhibiting or reducing outrage, such as devaluation and official channels. As previously discussed, Bandura (2002; 1999) examined the mechanisms of what he terms as ‘moral disengagement’ in relation to atrocities such as killing and torture. Bandura (1999) believes that there are psychological instruments that people use to minimise the moral concern about acts like torture and killing. These include such mechanisms as: moral justifications for an act, euphemistic labelling, comparisons between whose atrocities are worse, displacement of responsibility, diffusion of responsibility, disregarding or misconstruing consequences, attribution of blame to the victim, and dehumanisation of the victim/survivor (Martin, 2007, p. 181-182). These mechanisms are intimately linked with the Backfire Model (Martin, 2007), and many of the techniques overlap, such as the use of labelling or the victim blaming technique.

Similarly, Stanley Cohen (2001) also examined social responses to atrocities like torture and killing, and found that denial was core to the responses. Cohen (2001) believes that people prefer to ignore or deny what is occurring by utilising five key techniques: deny responsibility, deny the injury, deny the victim appropriate status, condemn the condemners and appeal to higher loyalties. These techniques can also be applied to the Backfire Model (Martin, 2007), particularly as denial that torture occurred is apparent in many cases of torture in the War on Terror. However, Cohen’s model focuses on denial at the psychological and government levels, whereas backfire looks at the tactics (Martin, 2007).

The theories around denial and moral disengagement are relevant to the analysis in a number of ways given the overlap between the methods used by authorities and techniques of minimising outrage. Ultimately, the Backfire Model (Martin, 2007)

was chosen as the framework for analysis due to its relevance to acts of torture, and its applicability to the Australian context, but these overlapping theories are also taken into account given their relevance to the topic.

There are some limitations to the Backfire Model. For example, one view could be that focusing on the tactics does not sufficiently take into account the broader political forces at play, and that these have direct relevance to the techniques employed by authorities and the effectiveness of the strategy. For example, as the research explores, the broader political structure played a significant role in the perpetration of torture during the War on Terror because of the way the system had been structured to craft, carry out, and subsequently cover-up the actions of perpetrators. Further, because the political environment manifested in the rise of nationalistic goals and pro-militarism, it meant that the social condition was ripe for torture to occur. The role of the political environment was also important when examining the evidence of inhibiting outrage at the injustice of torture. These broader political considerations were therefore incorporated into the analysis.

Social Constructions and the Media

Social constructionism forms one aspect of the liberal human rights framework (Finn & Jacobson, 2003; Ife, 2010) and is based on the notion that all knowledge is derived from and maintained by social interaction and processes (Berger & Luckmann, 1991; Burr, 2003). In this sense, language and social interaction convey and construct meanings and versions of events that may be attached to certain phenomena, rather than reflecting reality or accuracy (Potter & Wetherell, 1987). Social constructionists are concerned with power, narratives, the use of language and the social and political processes that shape people's understanding of the world in which they live (Burr, 2003; Muehlenhard & Kimes, 1999). Whilst not coming from a postmodernist foundation, this research recognises that the way in which issues are constructed publicly – whether they are correct reflections of reality or otherwise – do have a significant impact on the way people relate to phenomena such as torture. Indeed, whilst there are interpretations of events, the interpretations are not necessarily accurate, and may, in fact, be shaped for a particular purpose, whether that is to subjugate certain groups of people in order to maintain power, or to exert political

influence (Potter & Wetherell, 1987). For example, the legitimisation of the violence perpetrated against Aboriginal and Torres Strait Islander people in Australia by Europeans on the basis that they were ‘uncivilised’ is a pertinent example of this (Lovell, 2014, p. 221).

Certainly, the way in which the media ‘frames’ concepts has been shown to play a significant role in influencing and shaping world views and constructions of reality (Dijk, 1988; Gamson, 1992; Iyengar, 1990; Klocker, 2004; Klocker & Dunn, 2003; Oettler, Huhn, & Peetz, 2009). Jonathan Potter and Margaret Wetherell (1987) provide an example of a media article entitled “Islamic terrorists blow up plane”. They point out the negative connotations and stereotypical terminology used in the article, such as ‘hijackers’, ‘gunmen’ and ‘terrorists’. They then go on to describe the same actions by interchanging the language, and using terms such as ‘freedom fighter’ who was acting in order to bring about necessary social change. The end result is that political conflict is being paralleled by the linguistic conflict, and a construction of reality has occurred, rather than a description of events (Potter & Wetherell, 1987).

This example exemplifies the use of manipulative political rhetoric that is a core business of politicians, supported by the mainstream media, and entirely relevant in the War on Terror paradigm. The power of persuasion is reliant on a politician being able to convincingly convey an argument (Uhr & Walter, 2014). The narrative set by political rhetoric serves ideological functions (Uhr & Walter, 2014), whether this be in relation to whom is deemed worthy of sympathy and respect, or framing an issue that sits within a broader ideological framework that centres around nationalism. In this way, there is a connection between narrative and how language is used depending on the values and beliefs of the target social group, and what purports to be a truthful account (Uhr & Walter, 2014, p. 123). Dominant political rhetoric becomes extremely influential in normalising certain language, and can be used to maintain the status quo of power relationships (Lovell, 2014). However, what is left out of the narrative can be just as important as what is left in. Omissions and framing play a major role in how the media reports on social issues, as many journalists are provided with media releases that already set the tone of specific articles. Politicians have a significant role in media stories and how they are framed.

The mainstream media in particular is a powerful machine that can contribute to the politicisation of an issue depending on the certain types of information that is provided to the public, and the way it is conveyed (Bean, 2005; Kupchik & Bracy, 2009; Mutz, 1994). Aaron Kupchik & Nicole Bracy (2009) note that due to the public receiving their information about social problems from the media, and politicians who often have bias or hidden agendas that distort reality, this often means that public fear is created about issues that they have no need to feel concerned about. This has been no more apparent than the media sensationalism around perceived terrorist threats post-September 11 2001. The danger of media framing is that the public receives distorted information, which filters an unrealistic reflection of reality to the viewing audience, and this can become a dangerous social construct (Potter & Wetherell, 1987). Media framing is also integral in inhibiting outrage at injustice if the victims are presented as less than human or somehow deserving of the treatment.

It is also important to emphasise the established link between journalists, politicians and military personnel. To receive ‘insider’ information, journalists can be corrupted into writing reports using the language of the military or politicians providing a media statement. This was demonstrated in Brendan Riddick’s (2013) research into the siege of Fallujah which found that politicians, supported by the media, used methods to minimise outrage and the community’s suffering. In the case of Fallujah, the media reports echoed official accounts of the events and obfuscated the reality for those who had suffered injury or death due to the actions of the US military and private security contractors (Riddick, 2013).

Studies over the years have demonstrated that this is certainly not an anomaly. A more recent example revealed that a former *LA Times* and current *Associated Press* reporter, Ken Dilanian, collaborated with the CIA on stories he wrote (Silverstein, 2014). Dilanian provided the CIA press office with drafts of his stories seeking approval before publication and even entered into discussions about how he could manipulate public opinion in relation to drone strikes (Valania, 2014). Dilanian also collaborated in a story that minimised the involvement of the CIA in the script of the Hollywood movie *Zero Dark Thirty*, which promoted torture as effective (Silverstein, 2014). Subsequent Freedom of Information (FOI) documents

demonstrate that the CIA had asked for script changes in the film in order to portray the agency in a “more favourable light” (Silverstein, 2014, p. 7).

The Propaganda Model

This link between the media and the protection and promotion of elite interests was explored in Edward Herman and Noam Chomsky’s (1988) book *Manufacturing Consent*. The Propaganda Model (Herman & Chomsky, 1988) outlines five filters used to control what is reported in the mainstream public and how this marginalises dissent and presents a centralised world view. The five filters include; the size and concentration of media organisations, wealth and monopolisation of media ownership, the use of advertising as the main source of income for media organisations, the reliance on official sources for the reporting of media stories and ‘experts’ being provided by those with powerful interests, ‘flack’ as a means of controlling the narrative, and anti-communism as a control mechanism (Herman & Chomsky, 1988, p. 2).

Of course, one only needs to replace the fear around communism with the terrorism hype in the post 9/11 environment to see the applicability and relevance of the framework in the present context. In particular, the War on Terror has provided the ideological means to create a new ‘national religion’ of anti-terrorism, replacing the anti-communist political ideology utilised by the US Government to mobilise military and political resources during the Cold War.

As will be explored in the thesis, the reliance on official sources by the mainstream media is also of direct relevance to the issues facing the reporting of torture in the War on Terror, given the removal of voice for the survivors who were taken to facilities where they were unable to convey their suffering, as well as the general framing of stories concerning their torture in the Australian context. This is an important media filter explored in Chapter Five.

In addition, the protection of the economic interests of those who own and fund the media are of direct relevance, whether in relation to the wealthy individuals and corporations that own the major media organisations, or the advertisers who fund these multinational corporations. The concentration of media ownership continues to be an issue in Australia given the monopoly held by Murdoch’s News Limited

(Pusey & McCutcheon, 2011). For example, the Propaganda Model (Herman & Chomsky, 1988) would posit that pro-war narratives reported in Murdoch's papers protected the interests of the elite who fund them, and therefore reporting civilian casualties and the bombing of hospitals and schools would not be considered newsworthy (Riddick, 2013). The Model suggests that the monopolisation of the media has also allowed for the control of the mainstream world view. For example, when the media is controlled by a small number of individuals and organisations, the media owner's world view is sold to the public as the national opinion. In addition, the close relationship between the mainstream media and government authorities remains a significant issue. Herman and Chomsky (1988) argue that a structural interdependence has manifested between the media and government due to media organisations being reliant on government imposed regulations, media laws and taxes. This interdependence becomes a concerning situation in relation to the perpetration of crimes by state officials, because if the media is reliant on licencing or other government legislation to produce maximum profits, they are more likely to report a skewed narrative in order to protect the government and therefore their own interests.

Given the link between the authorities and media, and the power they have in shaping the public understanding of an issue like torture, the research sought to understand the techniques used in inhibiting outrage at the injustice of torture. The Propaganda Model (Herman & Chomsky, 1988) provides an important framework to understand this phenomenon.

Thesis Structure

Chapter Two provides a background to the War on Terror. The history of the torture program is explored as well as responses to the events of 9/11. The establishment of detention facilities such as Guantanamo Bay is explained, and the interrogation techniques used are examined. The concept of extraordinary rendition is presented in this chapter, as is the expanded role that private military and security contractors now have in the operations that were in the past left to traditional military forces. The establishment of organisations such as JSOC ("jay-sock") and their work with the CIA are introduced. These facilities, techniques and organisations are central to

the issues relating to torture in the War on Terror addressed in this thesis, and provide context for the research.

Chapter Three delves into the Australian Government's role in the War on Terror. The background to the political situation in Australia under the Howard Government highlights the rationale and social climate that permeated Australia at the time. The murky world of the Australian Government and its agent's involvement in the US Government torture and detention program are also examined, and evidence of Australian Government and military involvement in Abu Ghraib and Guantanamo torture are presented. The cases of Mamdouh Habib, David Hicks and Joseph Thomas are introduced, giving a background into the three main cases that dominated the headlines at the time. And finally, the chapter explores Australia's counter-terrorism legislation, including the harsh control order regime and other preventative detention measures.

Chapter Four provides methodology used in the research and the article selection process. The database and newspaper selection is explained, and the process of analysis utilising the Outrage Management Model (Martin, 2007) is presented. The data results are presented in a pictorial format and the raw numbers are provided as an overview. The spikes in the number of newspaper articles discussing torture are indicative of world events that were influencing reporting at the time. For example, there was a spike in 2004-2005 that was symptomatic of the release of the photos that came out revealing the extent of torture that occurred at the Abu Ghraib torture facility.

Chapter Five explores the results of the ten year newspaper analysis examining the evidence of methods used to inhibit outrage at the injustice of torture. The chapter delves into the substantial evidence that US and Australian officials and their agents engaged in cover-up, including the destruction of tapes by the CIA, and the media ran stories that uncritically quoted US and Australian officials. The second section, and one of the more remarkable results given the substantial amount of evidence, explores the use of devaluation as a method for inhibiting outrage. The evidence is overwhelming in the Australian context, and numerous examples are provided to exemplify this. The reinterpretation of events is also explored, and the methods that the media and politicians utilised to shift focus off the torture that was occurring, and

their accountability for that torture. The use of official channels is the fourth method examined, and the results included the many investigations that appeared to address the problems arising from torture but, instead served to cover-up and obfuscate the reality from the public. And finally, the use of intimidation to inhibit outrage was demonstrated. Whether through the use of legal channels, or overt intimidation, the results provide for numerous examples of this occurring over the years, including the intimidation of witnesses and the rewarding of those involved.

Chapter Six expands on these findings to examine the support networks that facilitate and maintain the perpetration of state-inflicted torture and the subsequent cover-up. These vast torture support networks provide ideological, political, economic and practical support for the perpetration of torture. The chapter explores the ideology and politics of torture and terrorism, and the mechanisms by which the state uses torture as a method of control and as a function of empire. The mechanisms and the workings of the deep state are introduced as a system that operates in secrecy and outside the control of any civilian leadership. The way the state operates and cultivates a culture of impunity is also discussed. The spread of militarism is identified as a theme in the findings, including the promotion of ‘legitimate violence’ when it is inflicted by the state. The politicisation of terrorism, and how fear is used as a political tool, is discussed. The case that torture is a form of state terrorism is presented, and the impacts of terrorism on the survivors, their families and the wider community are discussed. Finally, the expansion of the national security state is introduced as another way that torture is covered-up, and countering voices are stifled. This is reinforced through the new shift towards cyber-warfare, which has emerged over the past decade in particular.

Chapter Seven explores suggested means of addressing torture using ‘countermethods’, such as; exposing the cover-up, validating and re-humanising victims/survivors, emphasising the injustice, discrediting official channels, and resisting intimidation. Theories around radical social change are discussed, and the need for narratives that promote peace and the dignity and respect for all human beings are introduced. The importance of promoting empathy is introduced, and the need to shift the culture and structure of society from one that is individualistic and legitimises some forms of violence, to one that is more community minded.

Structural change is argued as the only way to address torture given the underlying systems and mechanisms of support.

Chapter Eight presents the conclusion which reflects on the research questions and the significance of the findings. A summary of the main findings is presented. Finally, the postscript is intended to provide the reader with the most recent information in relation to the situation for torture survivors and accountability.

Conclusion

This chapter provided an introduction to the research and explored the key definitions and terminology utilised in the thesis. The problematic nature of defining torture and terrorism was introduced, given that these concepts are usually subverted by those with powerful interests. This extends to notions of human rights and the problematic way in which rights have become a manifestation of empire, rather than protecting the most vulnerable members of the community. Despite these issues, humanitarianism was identified as forming the basis of the research given that the framework sees all human beings as equal and rights are applied universally. This is of particular importance when examining issues relating to torture given that it is usually perpetrated against those who are considered as ‘others’ or social pariahs. The Backfire Model (Martin, 2007) was presented as the core of analysis, and this included a discussion around theories of outrage. The role of the media in shaping the narrative was also examined, as was the applicability of Herman and Chomsky’s (1988) Propaganda Model and Stanley Cohen’s (2001) theory around outrage and denial, in the context of the War on Terror. Finally, an overview of the thesis was presented to provide the reader with an outline of the main issues that will be discussed and explored in the thesis.

The following chapter presents an historical overview of the War on Terror to provide a background and context for the research. The complex political situation is explored and the ideological and political mechanisms put in place by the Bush Administration are introduced, including the legal justifications for holding individuals detained in the War on Terror indefinitely and in conditions that amount to torture. The issue of extraordinary rendition is explored, in addition to the rise of private military and security contractors, and their link to covert torture.

Chapter 2: Background to the War on Terror

...convinced that we lack moral or political principles to bind us together, we savour the experience of being afraid...for only fear, we believe, can turn us from isolated men and women to a united people. Looking to political fear as the ground for our public life, we refuse to see the grievances and controversies that underlie it. We blind ourselves to the real-world conflicts that make fear an instrument of political rule and advance, deny ourselves the tools that might mitigate these conflicts, and ultimately ensure that we stay in thrall to fear (Robin, 2004, p. 3).

The military and political response to the September 11 terrorist attacks was undeniably one of the most significant events to impact the Western world in the past two decades. The fear that ensued, the devastating military response, and the decimation of human rights and civil liberties, have all contributed to the current political climate now faced in both the US and Australia.

The purpose of this chapter is to provide context for the research by exploring the historical, political and ideological underpinnings of the War on Terror, including the rationale for the wars in Afghanistan and Iraq. The devastating military response is introduced and the political impetus that allowed for the definition of torture to be manipulated is examined. The history and methods of interrogation and torture are explored in a way that provides a context for future chapters, which examine the political and media rhetoric. The places of detention are introduced, including the legal black-hole of Guantanamo Bay, and the CIA extraordinary rendition program. Finally, the chapter explores the expansion of the US-led conflicts, including covert operations such as the drone and extrajudicial assassination program.

The Birth of the 'War on Terror'

Our response to 9/11 might have been wiser if only we had read history more carefully – Julian Burnside QC (2007, p. 131).

On September 11, 2001 two planes crashed into the World Trade Centre buildings in New York and another into the Pentagon, each target being an icon of US power. This abhorrent act caused the deaths of 2,977 people and created a chain of events

that has led to incalculable death, destruction and devastation in different parts of the world. The impact of the War on Terror waged by the United States Government and its allies, including the Australian Government, has been devastating. Over the past decade, hundreds of thousands of civilians have subsequently lost their lives in retaliatory attacks (Bohannon, 2011; Burnham, Lafta, Doocy, & Roberts, 2006; Moulton, 2004), there have been unlawful assassinations and mass assaults (Soherwordi & Khattak, 2011; Wolverton, 2011), thousands of people have been detained unlawfully for over a decade and denied due process (Amnesty International, 2011), some have disappeared (Center for Human Rights and Global Justice, 2005; Gimbel, 2011), and some have even been tortured to death (Allen et al., 2006).

Although globally, a long and violent history has included acts of terrorism and extreme violence to convey political messages, the astonishment of what had taken place on US soil and the fear that followed seemed to overshadow any memories of recent history. Leaders of the Western world appeared to forget the carnage and chaos that has pervaded Africa, parts of the Middle East and Latin America for decades; large-scale violence had now come to America's own doorstep. Indeed, the fear that ensued was insidious and permeated through the Western world, just as quickly as the attacks took place.

There was little public consideration that 9/11 could have occurred as a result of US interventionism in countless countries around the world (Johnson, 2007). Rather than seriously reflect on US foreign policy, US and Australian commentators reasoned that the attack was a result of individual psychology, or the "Muslim worlds [sic] fragile sense of identity" which was threatened by "Western values" and modernity (Robin, 2004, p. 5). Indeed, the narratives set by the Bush Administration were firmly established within days of the attacks, and an emerging ideology saw the role of the US as protecting "the innocent" and "advancing human rights" in the world to counter the terrorist threat (Danner, 2009, p. xxiv). But this was nothing new as the "terrorists" who "hated our freedoms" were in many ways the new communists (Danner, 2009, p. xxiv). Indeed, the American policy of containment that was active during the Cold War (Ikenberry & Slaughter, 2006), shifted to the Bush doctrine of pre-emption during this period (Lieber, 2005). Conservative foreign

policy analysts argued that deterrence could no longer be relied upon to face “non-state actors with millenarian aims...potentially equipped with devastating weapons” (Lieber, 2005, p. 26).

However, the US Government plan of global military domination was already in progress when the events of September 11 occurred (Lieber, 2005), and critics saw the attacks as an excuse for the US to expand its empire by pursuing military dominance in the Middle East (Chomsky, 2003b; Olshansky, 2007). For example, the 2002 National Security Strategy, outlined the official rhetoric around global dominance which included US forces being “strong enough to dissuade potential adversaries from pursuing military build-up in hopes of surpassing, or equalling the power of the United States” (White House, 2002, p. 30). International affairs expert, John Ikenberry described the declaration as a grand strategy that “begins with a fundamental commitment to maintaining a unipolar world in which the United States has no peer competitor” (as cited in Rappert, 2006, p. 31). The development of having a military force that prevents adversaries from contemplating resistance was a troubling development during this period (Kaysen, Miller, Malin, Nordhaus, & Steinbruner, 2002). Indeed, Kaysen et al. (2002) have argued that the US was actually proposing ‘preventive war’ as part of this strategy as opposed to ‘pre-emption’. Whilst pre-emptive war suggests that war is imminent and unavoidable, preventive war is characterised as a war of choice to prevent a threat further in the future (Kaysen et al., 2002, p. 3). Certainly, this characterised the invasion of Iraq. The Project for a New American Century was well and truly underway.

The rhetoric set into place what Danner (2009) termed a “democratic tsunami” in the Middle East that would use America’s unrivalled power to sweep away the “fundamentalists” and bring freedom and democracy to the region (p. xxv). In the place of ‘the Communists’, and even though they commanded no armies and controlled no state as was the case with traditional warfare, a new enemy called ‘the terrorists’ was successfully created (Danner, 2009). It was indeed, this ideological framework that gave rise to the devastating military response to 9/11.

The Military Response

The bombs are getting closer...thumping of anti-aircraft batteries all around...the people look like lost souls in purgatory. Perhaps we are already dead?...Fuck you George Bush...You wouldn't send your children here...you wouldn't go to war yourself...This is terrorism. I'm terrified. This is so bad, such a bad thing to do. The children are crying under the red sky. It's not like hell – this is hell...nothing is safe anymore. I want to hide but there is nowhere to go. The whole world is in flames. I hate you Bush, because you've made me hate. I cannot love anymore. I hate. And the world shudders and burns because of it. Is this it? The women and children crying while the sky bleeds.... - From the personal diary of journalist Paul Roberts who was covering the Iraq invasion for the *Globe and Mail* (Roberts, 2004, p. 4).

The War on Terror included a ramping up of US military activities in the Middle East. The Bush doctrine of “If you harbour terrorists, you're a terrorist: if you aid and abet terrorists, you're a terrorist – and you will be treated like one” instigated the bombing campaign against Afghanistan in October 2001, under the pretence of self-defence (as cited in Gurtov & Van Ness, 2005, p. 31).¹⁷ The 2001 Authorisation for the Use of Military Force (AUMF) was invoked by President Bush, which authorises the President to use “all necessary and appropriate force against those nations, organizations, or persons” responsible for 9/11 and those who “harboured such organizations or persons” (Weed, 2013, p. 1). This included al-Qaeda and associated forces. Whilst the reasons for attacking Afghanistan changed over time, and at one point included ‘freeing’ the women of Afghanistan from the Taliban, the Bush Administration claimed the right to self-defence (Robertson, 2006, p. 525) because Afghanistan constituted a state that was harbouring an aggressor (McCormack, 2007). However, although a long line of reliable intelligence pointed to Osama Bin Laden, the identity of those responsible for the 9/11 attacks was still not confirmed when the bombing campaign started (Gurtov & Van Ness, 2005).¹⁸ For example, even in 2002, former FBI director Robert Mueller testified before a Senate

¹⁷ It was later revealed that 15 of the 19 hijackers were from Saudi Arabia.

¹⁸ Mayer reveals that on September 12 a classified cable was sent by Cofer Black's deputies to CIA paramilitary operatives to kill Bin Laden, dismember him and to “send a few choice body parts back to Langley” (Mayer, 2008, p. 29)

committee saying “we *think* [emphasis added] the masterminds of [9/11] were in Afghanistan, high in the al Qaeda leadership” (as cited in Chomsky, 2003b, p. 200). Despite the uncertainty, the Bush Administration began its Operation Enduring Freedom with ferocity and, regardless of international norms, did not seek any authorisation from the UN Security Council (Robertson, 2006).

The US Government had provided assistance to the Taliban in Afghanistan from the 1980s right up to 2001,¹⁹ however the mission developed into boosting the Northern Alliance and attacking the Taliban whom they believed acted as ‘protectors’ of al-Qaeda. As Mayer recounts in her 2008 book *The Dark Side*, on September 13 in a meeting with the National Security Council that decided to initiate the war in Afghanistan, Cofer Black stated “you give us the mission – we can get ‘em. When we’re through with them, they will have flies walking across their eyeballs” (as cited in Mayer, 2008, p. 31). Indeed, former US Secretary of State Colin Powell who was also in the room at the time, later thought that “Bush seemed eager to kill” (as cited in Mayer, 2008, p. 31).

International human rights lawyer Geoffrey Robertson argues that there was no “imminent” danger posed to the US from Afghanistan and that the international legal principles of self-defence that were relied upon were therefore unwarranted (Robertson, 2006, p. 525). It turned out that Osama Bin Laden was in Pakistan when he was assassinated in May of 2011 (Soherwordi & Khattak, 2011). Regardless, the result of the war in Afghanistan was devastating – thousands of civilian casualties were recorded (Bohannon, 2011), and the decimation of civil liberties began.

It was, however, the ‘preventive’ invasion of Iraq that significantly characterised the dismantling of the rule of law in the War on Terror.²⁰ Just in time for a midterm election campaign in September 2002, the Bush Administration instigated what Chomsky terms as the “manufactured fear” campaign in September 2002, in an

¹⁹ The US funded, armed and supported the Taliban (and Bin Laden) throughout the Soviet invasion. This support continued even up to the Spring of 2001 when the US announced a \$43 million grant to the Taliban (the government of Afghanistan) for opium eradication (Mayer, 2008, p. 75). The relationship apparently changed when they refused to hand over Bin Laden after September 11. The civil war in Afghanistan between the Taliban and the Northern Alliance has caused much confusion in the Western media, particularly as the lines were blurred between the Taliban and al-Qaeda the terrorist group.

²⁰ Chomsky (2003b) argues preventive war is a clear war crime.

attempt to divert attention from domestic issues onto national security, which was the Republican party's strength (Chomsky, 2003b, p. 121). Along with North Korea and Iran, Iraq was one of the countries named by George W Bush as being the 'axis of evil' (Danner, 2009).

Although the threat of nuclear proliferation had been identified in the 2002 National Security Strategy, just ten days later the UN Disarmament Committee adopted two resolutions calling for stronger measures to "prevent the militarisation of space", and the second which reaffirmed the prohibition of "poisonous gasses and bacteriological methods of warfare", both of which the US abstained from (Chomsky, 2003b, p. 121). Paradoxically, it was the perceived threat of the tyrannical regime of Saddam Hussein harbouring weapons of mass destruction (WMD) that provided the public impetus for the US Government to attack Iraq.

The Bush Administration had already received advice from the CIA that although there was little likelihood that Saddam Hussein would initiate any terrorist operation against the US, if the US did attack Iraq, the threat would in fact increase (Gurtov & Van Ness, 2005). In reality, numerous experts had warned the Bush Administration that war with Iraq would increase the risk of terrorist threats and global anti-US sentiments (Poynting & Whyte, 2012). However, according to several analysts, having control over Iraq's oil fields and the increasing desire for hegemony, were the prevailing considerations in the decision to attack Iraq (Chomsky, 2003b), and indeed, the ideology that the US must protect the innocent and advance human rights certainly played a crucial role in the grand US plan for maintaining power and military dominance (Danner, 2009).

Although Saddam Hussein's regime was, without a doubt, brutal and tyrannical, the impetus to invade was false, there were no WMDs and Iraq did not have ties to al Qaeda (Lewis & Reading-Smith, 2008). However, straight-faced members of the Bush Administration lied to a fearful public, stating that they should not wait for the "mushroom cloud" before engaging in a pre-emptive strike (Hammond, 2007, p. 59). So in March 2003, the US Government and its allies under the banner of the Coalition of the Willing invaded Iraq – an act former Secretary General of the United Nations, Kofi Anan, stated was contrary to international law (BBC News, 2004; Doran & Anderson, 2011; Gillespie, 2004).

What the US Government termed a ‘shock and awe’ campaign involved an initial 29, 200 air strikes on Iraq, and an additional 3, 900 over the next eight years (Swanson, 2013). The deadly payload included 400 tonnes of depleted uranium weapons as well as cluster munitions (Human Rights Watch, 2003), and white phosphorous (Swanson, 2013). Not only military targets were destroyed during the conflict. Verifiable evidence has confirmed that civilians, hospitals, schools, electricity grids and ambulances were hit, some indiscriminately²¹ (Doran & Anderson, 2011; Mulhearn, 2010; WikiLeaks, 2010a), and some due to what Human Rights Watch called an “unsound US targeting methodology” (Human Rights Watch, 2003, p. 6). Doran and Anderson (2011) state that as of 2011, the death toll due to the conflict reached between 600 000 and 1.2 million.²²

It was the launching of George Bush’s “War of the Imagination” that Danner (2009) states created the:

America the jihadists depicted: an imperial, aggressive, blundering power that managed, by means of lurid, deathless images of tortured Muslims, to prove to the world that all of its purported respect for human rights and freedom was nothing but base hypocrisy (p. xxv).

The Torture Memos and Treatment of ‘Detainees’

All you need to know is that there was a ‘before 9/11’ and there was an ‘after 9/11’. After 9/11, the gloves come off – Cofer Black, former head of the CIA’s Counterterrorist Center (CTC) (as cited in Mayer, 2008, p. 43).

The treatment of those held in US custody as a result of the War on Terror quickly became an issue for the Bush Administration as the public pressure mounted to find those responsible for the terrorist attacks. The fear that allowed for the bombing of

²¹ The issue of war crimes prosecutions has been widely covered. Although the US government signed the Rome Statute of the International Criminal Court (ICC) in 2000, the Bush Administration informed the UN that it would not become a party to the treaty. In addition, the Military Commissions Act 2006 granted officials “retroactive immunity from war crimes prosecution” (Doran & Anderson, 2011, p. 286). The Australian situation is clearer as the state ratified the Rome Statute on 1 July 2002, and enshrined provisions into domestic legislation under the *International Criminal Court (Consequential amendments) Act 2002 (Cth.)* (Doran & Anderson, 2011).

²² There has been criticism that this figure is incorrect (Bohannon, 2011). The numbers differ depending on which source is utilised. For example, Iraq Body Count which documents publicly reported deaths has the death toll between 113, 895 and 124, 724 (Conflict Casualties Monitor, 2013).

Afghanistan and the unlawful invasion of Iraq similarly gave rise to the sanctioning of torture by the Bush Administration. Researchers note that it was former US Vice President Richard (Dick) Cheney and his advisor David Addington, who used the crisis of 9/11 to further the agenda of enhancing presidential powers to a degree never before seen in US history (Mayer, 2008). Convinced that the terrorists were ‘going to hit again’, an intelligence tool called the “Top Secret Codeword/Threat Matrix” was introduced by Bush and Cheney in an effort to ensure that they would never again be blindsided (Mayer, 2008, p. 5). Jane Mayer (2008) recounts how in the days after September 11, Cheney and Bush received daily raw intelligence briefings, however, “mistakes were made” simply because the data was not analysed by intelligence experts and it was not corroborated or screened by those who had an intimate knowledge of the situation; there was no filter (p. 5). The combination of compounded fear, this new flawed Matrix, and the expansion of executive power became a trifecta for disaster, and inevitably led to the enactment of policies that allowed the sanctioning of “government officials to physically and psychologically torment US held captives, making torture the official law of the land in all but name” (Mayer, 2008, pp. 7-8).²³

In the days after September 11, Cheney had already summoned lawyers from the Department of Justice (DoJ) and the White House to work on legally justifying the expansion of presidential power, relying on the know-how of White House Counsel Alberto Gonzalez, Jay Bybee, John Yoo and David Addington (Sands, 2008). A host of advice and memos were drafted in these initial few years after 9/11 and resulted in counsel which deemed that the President could “defend the nation as he saw fit in ways that were not limited to any laws”, and that he also “had the power to override existing laws that Congress had specifically designed to curb him” (Mayer, 2008, pp. 46-47). This included pre-emptive military action,²⁴ including action to prevent any future terrorist attacks, extending war powers to the United States mainland to enact

²³ It is important to note that torture has been systematically employed by the CIA and USG in past conflicts as a weapon of terror. For example, torture played a central role in the CIA's counter-terrorism program in Vietnam where they trained the South Vietnamese Police in the Provincial Interrogation Center Program (PIC) to torture using horrific techniques including rape, gang rape (using snakes, eels or hard objects), beatings, and electro-torture amongst other techniques (Valentine, 2014).

²⁴ This memo was entitled ‘The President’s Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them’.

martial law, the killing of civilians and the infringement of civil liberties such as warrantless wiretapping (Gurtov & Van Ness, 2005; Sands, 2008). Whilst the legal memos outlining these measures were kept secret at the time, by late September 2001 Bush's public speeches began to show hints of the powers now provided to him as president by White House lawyers. In a speech that reportedly reached 80 million Americans, Bush suggested that, whilst the War on Terror began with al-Qaeda and Bin Laden, that it did not end there, there was a 'global terror network' that needed to be eradicated (Bush, 2001).

This group of lawyers was also responsible for providing the highly contentious advice which posited that those detained in the War on Terror would not be extended the protections guaranteed under the *Geneva Conventions* 1949 (GCs). The GCs were established after World War II to prevent the mistreatment of both civilians and combatants in times of war. Because the US 'terror suspects', which according to the lawyers included the Taliban, were not to be designated as Prisoners of War (POW) as they were deemed irregular soldiers, and therefore outside the scope of international norms, the memos authorised the secret capture and indefinite detention of what they termed 'unlawful' or 'illegal' enemy combatants (Greenberg & Dratel, 2005).²⁵ In effect, the advice suggested that by designating those captured as 'unlawful enemy combatants', the President could suspend the writ of *habeas corpus* and therefore those detained could not challenge their detention before an independent and fair authority (Greenberg & Dratel, 2005; Mayer, 2008).²⁶ In addition, US detainees could be 'hidden' from the International Committee of the Red Cross (ICRC) and held indefinitely in incommunicado detention (Greenberg & Dratel, 2005). It was at this point that the US became the first nation to authorise violations of the GCs since World War II (Mayer, 2008, p. 9).²⁷

²⁵ Under the Geneva Conventions a lawful combatant was designated as a soldier who takes part in hostilities. There is a category for unlawful combatants that includes spies and saboteurs which, when drafted, had members of the French Resistance in mind (Mayer, 2008, p. 83).

²⁶ This was extended to the use of military commissions to try terror suspects rather than civilian or military courts under the Uniform Code of Military Justice (UCMJ). Cheney and Addington were reportedly wanting to make it clear to the people that it was not a law-enforcement matter, but a war (Mayer, 2008, p. 81).

²⁷ It was the US government that was the 'most ardent champion' of the *Geneva Conventions*, and indeed, principles in the *Lieber Code* formed part of the guidelines. The original manuscripts currently lie within the US State Department (Mayer, 2008, p. 9).

Amongst those practices determined as contrary to international law, the lawyers also provided advice that covert paramilitary death squads and unlawful assassinations targeting ‘terrorists’ could be employed by the US anywhere on earth under the action of ‘national self-defence’ (Scahill, 2013). The need for congressional oversight was also curtailed in the advice, as the interpretation meant that only four elected representatives were required to be notified, and they could not reveal to the public what they had learned (Mayer, 2008).

The use of a network of secret CIA prisons was also sanctioned (Scahill, 2013). Although the US practice of extraordinary rendition began under the Reagan Administration, the establishment of a network of “black sites” was created soon after the events of 9/11 (Danner, 2009; Mayer, 2008). In the past, rendition was apparently used by the US Government as a tool to bring those who were suspected of criminal activity to be tried before regular courts, but this changed after 9/11 to rendering suspects outside the law in an attempt to gather information about crimes not yet committed (Mayer, 2008, p. 108). The CIA black sites spanned globally, including parts of Europe, Asia (including the Middle East) and Africa; and although the exact figures will never be known, it is estimated that around 150 people were rendered between 2001-2005 (Gimbel, 2011).

Out of public view and coordinated by the CIA, private military contractors as well as US Government officials, many ‘terror suspects’ were taken to these secret prisons to be subjected to ‘interrogation’ (Scahill, 2013).²⁸ The most common locations for these secret prisons were Egypt, Morocco, Syria, Jordan, Uzbekistan and Afghanistan; all countries that have been identified by human rights groups as breaching prohibitions on torture and other cruel, inhuman or degrading treatment (Open Society Justice Initiative, 2013). When speaking about the rendition program an unnamed US official was quoted by the *Washington Post* as stating “We don’t kick the shit out of them. We send them to other countries so they can kick the shit

²⁸ The process of rendition in itself was harrowing. For example, on December 18 2001, two Egyptian asylum seekers seeking refuge in Sweden were snatched by around six men all dressed in black. They had their clothes cut off with scissors, were forcibly administered sedatives anally, hooded, placed in nappies and orange jumpsuits. They were then placed in a three-piece-suit, which is a term used to describe leg irons and handcuffs joined at the waist with a chain, and shuffled onto a Gulfstream V jet to be transported where they were to be rendered and ‘interrogated’ in a third country (Mayer, 2008).

out of them”, a statement which encapsulated US Government policy and attitude at the time (as cited in Pred, 2007, p. 373).

Indeed, it was the legal advice pertaining to interrogation and ‘intelligence-gathering’ that proved an extremely concerning development in the response to the War on Terror. Soon after September 11, former Vice President Dick Cheney was asked on a US television program how the Administration was going to respond to the continuing threat posed by ‘terrorists’. Cheney memorably responded that “We’ll have to work sort of on the dark side, if you will...it is going to be vital for us to use any means at our disposal...” (Cheney, 2001, p. 4). This dark side was manifested in the broadening of CIA powers and the sanctioning of what the Bush Administration lawyers termed ‘enhanced interrogation techniques’.

On November 19 2001, an order proclaiming a state of “extraordinary emergency” allowed the US military to “detain and try any foreigner whom the President or his representatives deemed to have ‘engaged in’ or ‘abetted’ or ‘conspired to commit’ terrorism” (Danner, 2009; Mayer, 2008, pp. 86-87; Sands, 2008). The order outlined that defendants could be sentenced to death, have no right to appeal to independent bodies, however, they would be treated humanely. Detainees, as opposed to prisoners of war, would be granted “adequate food, drinking water, shelter, clothing, and medical treatment” (Sands, 2008; Mayer, 2008, p. 87). The treatment of what the Administration deemed as high-value detainees paved the way for more aggressive forms of interrogation.

John Yoo, who was tasked with providing legal advice on obtaining more ‘actionable intelligence’, stated that the CIA was pushing for techniques that amounted to torture and violated protections outlined in the GCs because, as he stated unapologetically, “it works” (as cited in Mayer, 2008, p. 134).²⁹ However, other accounts point to a push by Dick Cheney and his lawyer David Addington (Sands, 2008). Under *Geneva Convention (III) relative to the Treatment of Prisoners of War* 1949, “No physical or mental torture nor any other form of coercion may be

²⁹ On September 8 2006, a Joint Senate Select Committee Report on intelligence countered the argument that torture was effective. The report details that top Bush Administration officials had known for years that in the case of al-Libi, bad intelligence was obtained because he was tortured. Al-Libi stated that he was under pressure to admit ties between Saddam Hussein and al-Qaeda in Iraq.

inflicted on prisoners of war to secure from them information of any kind...” (Article 17). However, the justification for the treatment of those detained became an issue of legal acrobatics, and the Bush Administration lawyers seized on any loopholes they could to deny any protections. For example, the legal advice claimed that even though Afghanistan was a signatory to the GCs, it was argued to be a failed state, so therefore they would not apply (Duffy, 2005).

As aforementioned, the now infamous ‘torture memos’ authored by John Yoo and Jay Bybee deemed that for an act to constitute torture, there had to be “specific intent” to torture, and the physical pain must be “equivalent in intensity to the pain accompanying serious injury, such as organ failure, impairment of bodily function, or even death” (as cited in Greenberg & Dratel, 2005, p. 172). Any action or treatment that did not reach this threshold was deemed as acceptable under Yoo and Bybee’s interpretation. Upon this advice, techniques such as waterboarding, forced nudity, sleep deprivation, isolation, wall slamming, environmental manipulation, exploiting people’s fear of dogs and other animals, and stress positions were authorised. Historian, Alfred McCoy (2012), who has researched US psychological torture for many years now, likens the US definition of torture to a game of Cluedo. He used the analogy of the murderer being Mrs White with the candle-stick in the kitchen. Anything outside of that would not be deemed as murder (McCoy, 2012). Unfortunately, his parallels are extremely pertinent and clearly demonstrate the narrow definitions set into place so that the Bush Administration could attempt to legalise what they were doing.

In light of the legal advice received by the White House, on January 18 2002, Donald Rumsfeld sent an order to the Joint Chiefs of Staff declaring that “the military no longer needed to follow Geneva’s rules in their handling of al-Qaeda and Taliban prisoners” (Mayer, 2008, p. 123). In their warped reality, they were now able to make up their own rules. A few weeks later on February 7, a directive sent by President Bush extended this by stating that as a matter of policy “the United States Armed Forces shall continue to treat detainees humanely” as long as it was consistent with “military necessity” (as cited in Mayer, 2008, pp. 124-125). However, the conduct of the CIA and other covert operatives were left out of this directive.

Despite these directives, and even before these techniques were authorised, treatment that contravened human rights standards was already being employed by the US military and others acting on their behalf. Accounts of those held in US custody in Afghanistan soon after 9/11, including by the CIA, private military contractors and American Special Forces, detail treatment that violated the GCs including incommunicado detention, sleep deprivation, mock executions, forced nudity and the denial of adequate food and water. For example, a Navy medic whose report became declassified, noted that US citizen John Walker Lindh, who was captured in Afghanistan, was kept sleep-deprived, naked, blindfolded and bound to a stretcher with duct tape in a freezing cold shipping container (Danner, 2009). One document quotes a physician stating that “sleep deprivation, cold and hunger” could be applied to make Lindh talk (as cited in Mayer, 2008, p. 94).³⁰ Unlike most detained in Afghanistan at the time, Lindh was sent back to the US to face trial because he was a US citizen.

Whilst the legal directives formed by the Bush Administration lawyers provided justification for harsher treatment, these directives were already being employed by those who were responsible for detaining ‘terror suspects’. Indeed, in 2005, President Bush declared that the CAT did not apply to prisoners held overseas, and in the process opened the door to immunity being provided to those operating in military prisons, and the CIA black sites (Sands, 2008). These multiple flawed legal analyses pervaded the treatment of those taken to Guantanamo Bay.

³⁰ Confessions that were extracted from him during this time were to be used in the US court hearing against Lindh, however, a deal was struck prior to trial because of the ‘mistreatment’ and because he was a US citizen, he was allowed a trial in a US court and would not be subjected to military commissions as other foreigners were/are (Mayer, 2008, p. 97).

Guantanamo Bay



Figure 1: The first Camp X-Ray prisoners, 11 January 2002 (Source: McCoy, 2002a)

The United States is proud to call itself a nation ruled by law. But even a nation of laws must understand the limits of legalism...War has its rules, of course – but by those very rules our enemies in this War on Terror are outlaws – Former Presidential speechwriter David Frum and Richard Perle, former assistant Secretary of Defense (2004, p. 196).

Guantanamo Bay, Cuba (Gitmo) was seized by the US Government under an ‘indefinite land lease’ in 1903, pursuant to the Platt Amendment as a result of the Spanish-American war (Ratner & Ray, 2004; Rose, 2004). The Amendment provided that the US Government had complete jurisdictional control over the territory, and although the lease stipulates that the territory was only to be used as a coaling station, the US Government at one point used it as processing station for refugees fleeing Haiti (Ratner & Ray, 2004). Although the rent for the territory is around US\$4,000 dollars a year, the Cuban Government has refused to accept any payments since 1959. Michael Ratner (2004), an attorney from the Center for Constitutional Rights who represents many Gitmo prisoners, states that for “all intents and purposes, Guantanamo is a colony or territory of the United States... the applicable law in Guantanamo is the federal U.S. law. The United States has complete control and jurisdiction over Guantanamo...” (p. 3). However, this legal situation did not suit the needs of the Bush Administration after the events of September 11.

After 2001, the Bush Administration needed a place to detain those it saw as part of the ‘global enemy’ in the War on Terror. In 2004, a top US official stated that Gitmo was chosen because “the legal advice was we could do what we wanted to them...they were going to be outside any court’s jurisdiction” (as cited in Roosevelt, 2008, p. 3). Indeed, an English Court of Appeal described Guantanamo Bay in the early days as a “legal black hole” (Rose, 2004, p. 10). Despite the regular process whereby those detained in the theatre of ‘war’ are able to go before tribunals to establish their combatant or non-combatant status, on 28 January 2002, Donald Rumsfeld visited Guantanamo and declared that “there is no ambiguity in this case. They are not POWs. They will not be determined to be POWs” (as cited in Seelye, 2002, p. 1). Former President Bush determined that those detained in Guantanamo Bay would be classified under a presidential order, as ‘unlawful enemy combatants’, therefore devoid of any protections under the GCs and devoid of rights to appeal their detention.

Since the first ‘detainees’ arrived at Gitmo on January 11 2002, the conditions and treatment have been shown to violate basic human rights protections, which prohibit torture, cruel, inhuman and degrading treatment (Amnesty International, 2011; Human Rights Watch, 2011). The 110 men and boys who made up the first arrivals at Gitmo were flown in on a cargo plane where they were shackled to the floor, hooded, handcuffed with a three piece suit, had earmuffs and goggles placed on their already hooded heads, and were injected with sedatives before landing. Because of the swift arrival of the men, appropriate infrastructure was not built to house detainees. Instead, wire cages were erected on a slab of concrete, leaving detainees exposed to the elements, and local wildlife, which included scorpions and rats (Olshansky, 2007).

Gitmo has been described as “a twenty-first century Pentagon experiment”; it is an interrogation camp designed to hold people outside the law without access to the outside world (Ratner & Ray, 2004, pp. 3-4). Ratner (2004) says: “Guantanamo’s purpose is to break down the human personalities of the detainees in order to coerce them from whatever their captors want, to get them to confess to anything, to implicate anyone. Guantanamo is a prison where cruel, inhuman and degrading treatment – even torture – is practiced, and is utterly illegal” (Ratner & Ray, 2004,

pp. 4-5). Colonel Donald Woodfolk, then commander of the Guantanamo Bay prison, explained that “the detention program at Guantanamo was aimed at holding the suspects not for punishment or for trial, but rather for gathering intelligence” (as cited in Mayer, 2008, p. 199). It was clear from the beginning of Gitmo that a psychological torture training ground had been established, and techniques that have been long known to disintegrate the personality were utilised immediately.

Interrogation

I didn't like it...when it went from me having to mentally prepare myself to go do this, to go in and throw chairs against the walls, and break tables, and sit there and leave a guy on his knees for two hours, to having to mentally prepare myself to do that – to the point where I enjoyed doing it. Fuck yeah, I got to the point where I enjoyed doing it – Former Bagram and Abu Ghraib interrogator, Damien Corsetti (as cited in Risen, 2014, p. 165).

The historical context is important when understanding the techniques used against US captives in Gitmo and elsewhere. A long process of honing psychological torture practices began in the mid-1900s, and according to McCoy (2012b), has passed through four basic phases; experimentation, propagation, perfection and impunity (pp. 16-17).

After World War II, a prison in West Germany operated as a secret black-site where “the CIA, other US intelligence operatives, and even former Nazi doctors hired by the US, ‘tested LSD and other interrogation techniques on captured soviet spies’” (Kaye, 2014a, p. 4). This continued during the Korean and Cold War, when the use of psychological torture techniques became more prevalent. During the Korean War, the CIA poured millions of dollars into researching how information could be extracted through ‘coercive’ questioning. In 1949, CIA experiments investigating mind control by utilising drugs and hypnosis began under the name of Project BLUEBIRD (McCoy, 2012b, pp. 17-18). From the 1950s to early 1960s in particular, experimentation exploring the use of psychological techniques that did not result in physical evidence, such as bruising, intensified (Margulies, 2006; McGuffin, 1974). For example, in the 1950s, Canadian psychologist Donald Hebb from McGill University, performed experiments on students that involved sensory

deprivation (McCoy, 2012b). He placed them in an air conditioned room with goggles, ear-muffs and gloves and left them there for two days. The students experienced virtual psychosis involving hallucinations, and within 48 hours, the results indicated that they were losing their own identities (McCoy, 2012b).³¹

Self-inflicted pain such as forced standing and stress positions also became a popular research subject in the 1950s when studies from Cornell University found that the KGB's most effective torture technique was not beating people, but forcing them to stand for days at a time; it caused swelling in the legs, ulcerations, hallucinations and eventually the kidneys shut down (McCoy, 2012b, p. 20). A study by Air Force sociologist Albert Biderman found that forced standing was the most "excruciating" since the "immediate source of pain is not the interrogator but the victim himself," thereby turning the "individual against himself" (as cited in McCoy, 2012b, p. 21). This began the use of stress-positions.

In addition, during this period, studies on non-human animals developed and refined the theory of 'learned helplessness' as a tool for psychological manipulation, as it was discovered to be a powerful strategy to destroy a person's will and rescind the personality to make them completely dependent on the captors. Central to the premise of 'learned



Figure 2- Abu Ghraib prisoner forced into a stress position (Source: US Department of Defense, 2003a)

helplessness' is the reality that when a human or non-human animal has been tortured for long enough, they will give up trying to avoid the pain because it destroys the animal's will to survive. Therefore, keeping beings in a state of constant shock and disillusionment inevitably breaks the spirit, making false confessions a core result.

³¹ It is important to note that the evolution of sensory deprivation techniques used currently can also be traced back to Stalin which was the first regime to seriously experiment with modern interrogations techniques (McGuffin, 1974). These techniques were then used to break down prisoners in Northern Ireland and eventually shared with US interrogators as part of the Quadripartite Agreement (Wright, 1998).

The result of the culmination of years of research was the CIA's first training manual, the 1963 CIA KUBARK Counterintelligence Interrogation Manual (McCoy, 2012b). Although the entirety of the manual is still classified, parts were released in 1997, and even more detail was released in April 2014 (Kaye, 2014a).³² The CIA KUBARK manual outlined the use of interrogation techniques such as isolation, stress positions, hypnosis, the use of mind altering drugs and sensory deprivation in order to successfully interrogate detainees. The CIA even used the techniques on their own recruits with devastating effects – most dropped out and refused to take the course (McCoy, 2012b). The CIA also released similar torture manuals and training in the 1970s and 1980s to Latin American torture teams and trained them at the School of Americas. The most significant of the CIA training manuals in relation to Guantanamo interrogations, was called the 1989 *Human Resource Training Manual* that, whilst advising against torture, advocates 'coercive questioning'.³³ According to this manual, the three major principles of coercive questioning are inducing "Debility, Dependence and Dread (DDD) to 'induce psychological regression' in the subject through bringing a superior outside force to bear on his will to resist" (Central Intelligence Agency [CIA], 1963, p. 52)

Research into 'effective' interrogation programs was not limited to the CIA. After the Korean War, the US Air Force developed a program called SERE, which stands for Survival, Evasion, Resistance and Escape (McCoy, 2012b). The four phase program recreated a situation in which captured air men were subjected to interrogation during the Korean War. During the Survival phase, air men are left in remote areas with nothing but a parachute. The Evasion phase culminates in the SERE instructors hunting the isolated personnel within the remote area. The following Resistance phase has been described as the most important part of the training. Military personnel are "isolated, stripped of their clothing, deprived of food and sleep, subjected to prolonged stress and duress techniques, humiliated and subjected to long hours of questioning" (Margulies, 2006, p. 121). The program was

³² Obtained under a Freedom of Information request by Dr Jeffrey Kaye, the newly declassified version of the KUBARK manual confirms that the CIA rendition program was not a product of the post 9/11 era, but was practised long before. The report also points to 'defector reception centres' for Cold War defectors and refugees where "preliminary psychological screening" took place (Kaye, 2014a, pp. 3-4).

³³ The manual states that torture does not work, however, the author fails to identify practices such as forced standing, humiliation and threats as forms of torture.

so ‘successful’ that it was expanded to other arms of the military. Ironically, the army described the program as necessary because whilst US military personnel are covered by the GCs, “captors of American personnel have not treated [American soldiers] in accordance with the spirit or letter” of the Conventions (Margulies, 2006, p. 121). Instead, captors have resorted to a variety of “illegal” practices in an effort to “exploit” American servicemen, including “psychological pressure”, “physical mistreatment,” and “medical neglect” (Margulies, 2006, p. 121).

The techniques used in the SERE program expanded over the years to include sexual and religious humiliation. Male soldiers have described being forced to walk naked whilst female interrogators humiliate them, wear make-up and dress in a skirt, and female soldiers have testified that they were nearly raped. The early 1990s saw an escalation of sexually humiliating techniques when military personnel were forced to recreate sexual acts on other captives, forced to wear and then remove a garbage bag skirt and bend over the table, curtsy and “act like a girl” (Margulies, 2006, p. 122). A form of waterboarding has also been used on personnel. A graduate described guards swarming over the ‘prisoner’, cuffing his arms and legs to a board and covering his face with a bandana whilst the other guard started “pouring water over the cloth. [The prisoner’s] limbs strained at the cuffs as if he were being shocked. The groaning, gurgling sounds were...awful...Every 20 seconds or so, the torturers would remove the cloth so the commandant could ask a question” (as cited in Shugar, 1988, para. 11).

According to the Pentagon, the goal of the SERE training is to “strip soldiers of their identities” by recreating situations of extreme stress, anxiety and humiliation to prepare them for captivity (Margulies, 2006, pp. 122-123). The 1983 *Human Resource Exploitation Training Manual – (Interrogations)* described quite succinctly the purpose of the techniques contained and refers to the learned helplessness principles.

The purpose of all coercive techniques is to induce psychological regression in the subject by bringing a superior outside force to bear on his will to resist. Regression is basically a loss of autonomy, a reversion to an earlier behavioural level. As the subject regresses, his learned personality traits fall away in reverse chronological order. He begins to lose the capacity to carry

out the highest creative activities, to deal with complex situations, to cope with stressful interpersonal relationships, or to cope with repeated frustrations (CIA, 1983, K-1).

Indeed, it was the ‘effectiveness’ of these techniques to break the spirit of the ‘detainee’ that led to psychologists and psychiatrists becoming part of the Guantanamo interrogation program. Many Gitmo interrogators were trained by SERE instructors or had experience in the Joint Personnel Recovery Agency (JPRA), which oversaw the SERE training. It was reverse-engineered SERE training that was used against detainees in what would become a training ground for torture. The techniques used against Gitmo detainees were not entirely the thoughtless actions of some sadistic lower level troops; many of these techniques were calculated and based on years of research into techniques that break the individual. Then head of US Central Command (CENTCOM) General James Hill, confirmed that coercive interrogation techniques drafted in October 2002 “resulted in the close collaboration between experts from the Army SERE school at Fort Bragg, North Carolina, and interrogation teams at Guantanamo” (Margulies, 2006, p. 123). Therefore, the Standard Operating Procedures of the prison and the interrogation techniques used on Guantanamo detainees were a culmination of reverse engineered SERE methods and other techniques developed by the CIA including forced standing, isolation, sexual humiliation, dietary manipulation and sleep deprivation.

These techniques were ramped up under the authority of Major General Geoffrey Miller after 2002, in an attempt to gain ‘actionable intelligence’. A year after the prison opened, members of the intelligence community were shocked to find that most of the detainees were not of any ‘intelligence value’, instead, they were teenagers and men in their eighties who had to move with the aid of a walking-frame. Eighty-six per cent of ‘detainees’ had been sold for a bounty to the US military, rather than being caught ‘on the battlefield’ as the Bush Administration had said publicly (American Civil Liberties Union, 2014). A senior CIA intelligence analyst was sent to Guantanamo in late 2002 to assess the intelligence situation. He found a state of chaos, including prisoner files without names or prisoner details. He stated that many had been caught in the dragnet: “they were not fighters... they should not have been there” (as cited in Mayer, 2008, p. 183). His report stated that

“he believed that the United States was committing war crimes by holding and questioning innocent people in such inhumane ways” (as cited in Mayer, 2008, p. 185). The report caused alarm in the White House, as the assessment was not coming from a human rights group, but as Mayer described, he was a hard and experienced senior analyst who had spent his life fighting terrorism (Mayer, 2008, p. 185).

Rather than heeding the warnings, the US Department of Defense (DoD) pushed for greater ‘flexibility’ in relation to Guantanamo interrogations (Mayer, 2008, p. 188). Colonel Brittain Mallow, a former Military Police officer stated:

There was tremendous pressure to produce actionable intelligence. And that has been, and was at the time, the number one priority... The pressure came from the highest levels of our government... There is no empirical evidence that tells you coercive or aggressive, physically coercive tactics are going to produce results (Mallow, 2007).

In response to this situation, and given the close relationship between Miller and Rumsfeld, the military then asked the DoJ for permission to go beyond already established rules for interrogation that were outlined in the Army Field Manual (Danner, 2008; Sands, 2009). The Army Field manual allowed for prisoners to be subjected to a number of techniques that, either in isolation or combination, amount to torture. There are also many loopholes in the manual that allow for subjective interpretation.³⁴ Of particular concern to human rights groups and the UN, are techniques contained in “Appendix M”. These include the use of isolation, or “separation”, as it is termed, in order to “prolong the shock of capture...and foster a feeling of futility” (US Department of Defense [DoD], 2006, p. 10); forms of sensory deprivation, which include the use of blindfolds, earmuffs and goggles to limit sensory awareness; the use of drugs and sleep deprivation, which in the context of the manual allows the Human Intelligence Collector (HUMINT) to only let detainees sleep four hours a night over thirty days (Brooks, 2009, pp. 1-2). The use of “fear-up” is also contained in the manual. This technique is used in conjunction with the “separation” technique in order to create fear and hopelessness. The manual

³⁴ For example, “complete deprivation of all sensory stimuli” is prohibited, however, this means that depriving the detainee of one or two senses at a time (sight and sound) would be acceptable as long as it’s not “excessive” (US Department of Defense, 2006).

describes: “in the fear-up approach, the HUMINT collector identifies a pre-existing fear or creates a fear within the source” (DoD, 2006, ch.8, p.10). In other words, from a human rights perspective, the situation in relation to detainee treatment under the Army Field Manual was still of concern;³⁵ the difference is that military conduct was bound by the Uniform Code of Military Justice (UCMJ), whereas the CIA and contractors had no oversight. The UCMJ prohibits treatment of detainees that amounts to cruel or oppressive treatment (Mayer, 2008).

Despite these prohibitions, documents have since revealed that in 2002, the US military was ramping up its interrogation practices, including using those outlined in the SERE program (Mayer, 2008). Mayer (2008) described that “hooding, stress positions, sleep deprivation, temperature extremes, and psychological ploys designed to induce humiliation and fear suddenly seemed legion” (p. 190). Behavioural Science Consultation Teams (BSCT, pronounced Biscuit) teams were also introduced around this time. BSCT teams are comprised of a psychiatrist and psychologist and are tasked to observe “interrogations, assess detainee behaviour and motivations, review interrogation techniques, and offer advice to interrogators” (Church, 2005, p. 19). Detainee fears and phobias were identified by the psychologists, and they collaborated with interrogators to modify interrogation techniques in an attempt to break the detainee down more quickly. By September 2002, the military held a number of brainstorming meetings to get ideas about how to crack Gitmo detainees. Former Military Lawyer, Diane Beaver, recalled that the television show *24* was one source of interrogation techniques as “it gave people lots of ideas” (as cited in Mayer, 2008, p. 196). In *24*, the fictional character Jack Bauer tortures his captives in order to make them talk in a fictional terrorist plot.

The interrogation and treatment of Mohammed Mani Ahmad Sha’Lan al-Qahtani, a twenty-six year old Saudi man, was documented in interrogation logs. Al-Qahtani was subjected to a host of torture techniques, such as being tied to a leash and made to act like a dog, told his mother and sister were whores, deprived of sleep for 48 out of 54 days, held down while a female interrogator straddled him, forced to wear a bra and thong on his head and doused with water 17 times (Grey, 2007). Evidence

³⁵ The techniques outlined in the Army Field Manual are still being used against prisoners. When Obama declared an end to torture practices when he was elected in 2009, the AFM became the core interrogation document for the military (Brooks, 2009).

suggests that Rumsfeld and high level Pentagon officials were ‘closely’ involved in al-Qahtani’s case (Mayer, 2008). Indeed, Lieutenant General Randall Schmidt, who was interviewed as part of an investigation of ‘abuse’ at Guantanamo, described Rumsfeld as “personally involved” in al-Qahtani’s interrogation (as cited in Mayer, 2008, p. 195).³⁶ It has since surfaced that Haynes and Rumsfeld were seeking legal guidance from former Defense Department lawyer John Yoo and then head of the Justice Department’s Criminal Division, Michael Chertoff in relation to the interrogation techniques (Mayer, 2008, p. 194).

When the CIA found out that Al-Qahtani was accused of being involved in the 9/11 terrorist attacks, they wanted him handed over to them, as they were already holding and interrogating the so called ‘high-value’ detainees in secret Black Sites. Mayer describes an argument that took place between the then head of the CIA, George Tenet, and Donald Rumsfeld, with Condoleeza Rice in the middle. A source within the Pentagon stated that because Rumsfeld wanted to show they could be successful, “that’s when the silly stuff started” (as cited in Mayer, 2008, p. 195).³⁷

³⁶ It must be recognised that people within the Pentagon were raising concerns about the treatment of Guantanamo and other war on terror detainees. For example, records show that when Brittain Mallow, the commander of the Task Force, became aware of what was going on after seeing interrogation logs from the prison, he told Haynes that coercive questioning was “immoral and unethical” (as cited in Jones, 2008).

³⁷ David Becker, head of the Interrogation Control Element in Gitmo, also pointed to Rumsfeld and those higher up the chain of command. He stated that “Most of the aggressive techniques [were] a direct result of the pressure felt from Washington to obtain intelligence and the lack of policy guidance being issued from Washington” (as cited in Mayer, 2008, p. 195).

Torture Techniques



Figure 3- Satar Jabar connected to mock electrical shock devices under threat that stepping down from the box would cause his electrocution at Abu Ghraib (Source: US Armed Forces, 2003)³⁸

Guantanamo military interrogators had just returned from a SERE conference run by the JPRA when the experimental techniques were used on al-Qahtani and others in Gitmo.³⁹ Waterboarding could be carried out as long as the “specific intent” was not to cause prolonged mental harm (Greenberg & Dratel, 2005; Mayer, 2008, p. 201). However, it was the techniques that were taken almost directly from the KUBARK and the *Human Resource Exploitation Manual* that centred on the Debility, Dependence and Dread (DDD) principles, that were most widely used, and arguably caused the most psychological harm.

According to the DDD model, the goal of psychological regression begins at the time of arrest. The person is “rudely awakened and immediately blindfolded and handcuffed” (CIA, 2014). During transport to the detention facility, the person is subjected to isolation, both psychological and physical. Humiliation also plays a part in the period of regression. The person is stripped, photographed, showered and subjected to a body cavity search. The prisoner is then to be provided with “ill-fitting clothing”, as “familiar clothing reinforces identity and thus the capacity for resistance” (CIA, 2014; McCoy, 2012, p. 102). Strict isolation plays a central role in this process, so before the first interrogation, captives are strictly kept in the dark

³⁸ This technique of forced standing can be traced back to Argentina, demonstrating that whoever placed Satar Jabar in that position, knew the psychological effects it would have (Rejali, 2007).

³⁹ Diane Beaver describes the military men in attendance at the conference becoming “glassy eyed” when they realised how aggressive they were going to get. She said “You could almost see their dicks getting hard as they got new ideas” (as cited in Mayer, 2008, p. 198).

about their surroundings, where they are, and even what time of day it is. Colonel Woodfolk, head of the Guantanamo prison at the time, maintained that to harvest intelligence, detainees had to be kept in an atmosphere of “dependency” (Margulies, 2007, p. 26). It is widely accepted that solitary confinement is cruel and causes long-term and permanent psychological damage. Research has determined that the use of solitary confinement alone can cause emotional damage, hallucinations, delusions, depersonalisation and declines in cognitive functioning (Rejali, 2007). Due to this evidence, solitary confinement was banned under Common Article III of the GCs.

The conditions of the cell are also important in the DDD model. The colour of the cell, as well as access to natural light and temperature, should all be controlled by the HUMINT. For example, keeping the lights on 24 hours a day will disrupt the person’s sleeping pattern, and they will not know whether it is day or night. Bedding should be kept to a minimum so that they are never comfortable, or able to recover from the ‘shock of capture’. This manifested in Guantanamo in a number of ways. For example, in Camp X-Ray, the men were held in small cages of wire that only had a concrete floor. They were completely exposed to the elements, including the heat of day. In other enclosed camps, the air conditioner is set to freezing and the men are left in isolation with nothing more than a pair of shorts. Former prisoners have described what they call ‘torture rooms’ where they are placed in stress positions, so that the wrists and ankles are shackled to the floor, the air conditioner is set to freezing, there are pornographic and macabre photos placed all over the walls and the floor, loud heavy metal music is blasting and they are left in there for hours at a time (Begg, 2007; Hicks, 2010). One man came out of that room with no hair because he had pulled it out strand by strand (Hicks, 2010).

Threats are also used as part of DDD model to induce ‘cooperation’ (CIA, 2014). The manual states that threats should not be made unless they can be carried out. Some of these threats include public exposure, confiscation of property or physical violence. Part of the Debility process is the purposeful attempt to disorient the person and destroy their capacity to resist. For example, meals and sleep are not to be at any discernible time pattern, so that the person is solely dependent on the interrogator for all basic needs. This is even suggested to extend to the use of the

toilet facilities, which were also tightly controlled at Guantanamo, particularly in relation to the rationing of toilet paper.

Sleep deprivation as a form of torture stems back to the Catholic inquisition and the Calvinist Church of Scotland in the 1600s (Rejali, 2007). They used sleep deprivation to seek out ‘witches’ in the 17th Century. There is overwhelming evidence that sleep deprivation is one of the cruellest and most painful forms of torture. When someone is sleep deprived, the body’s resistance to pain is lowered. The person also suffers from deep pains in the body; the pain usually begins in the lower body and spreads upwards as the sleep deprivation sets in. It causes both auditory and visual hallucinations and completely destroys the sense of self. However, psychological experiments have demonstrated that the most ‘useful’ result of sleep deprivation for interrogators is that it leads to the detainees becoming much more suggestible. It has been used for years to gain false confessions. It was used by the Nazis, the French in Algeria and the British in Northern Ireland (Rejali, 2007). The US formally authorised sleep deprivation against ‘terror suspects’ for periods of 72 hours; although these guidelines were not strictly adhered to. They used programs called ‘operation sandman’ and the ‘frequent flyer program’ where they would kick inmates cells and scream at them every half hour, or they would physically move them from cell to cell every ten minutes so that there was little time for deep restorative sleep (Hicks, 2010).

Once the Debility and Dependence of the prisoner has been established, Dread comes into play (CIA, 2014). Fear is the core concern with the Dread principle – the Manual explains that the fear of anything vague or unknown ‘induces regression’. Where pain is to be employed by the interrogator, the Manual recommends self-inflicted pain, such as forcing the prisoner to stand at attention or sit on a stool for long periods of time, as this is “more likely to sap his resistance” (McCoy, 2012, p. 103). It has been established that threats during interrogations at Guantanamo included the use of stress positions, where men were chained to the floor for hours at a time, and made to urinate or defecate on themselves. Threats to detainee’s family members have also been recorded in an attempt to create fear in the detainees.

These techniques were also employed in other places of detention, including Afghanistan and Iraq. In fact, military personnel have testified that the torture of

prisoners was so widespread and systematic that they used to beat prisoners (or PUCs [Persons Under Control], as they would call them) for stress release (Human Rights Watch, 2005). The US Army 82nd Airborne Division, at Forward Operating Base Mercury, provided detailed testimony of how they routinely used physical and mental torture in order to ‘gather intelligence’, including “smoking a PUC”, which referred to sleep deprivation and depriving prisoners of all food except for water and crackers (Human Rights Watch, 2005). They stacked prisoners in pyramids, tipped cold water on prisoners and left them in the cold, beat them with baseball bats, forced them to undertake extremely stressful exercises, and left them in outside holding facility to be exposed to the elements (Human Rights Watch, 2005). These accounts were consistent with other torture techniques being employed in other US-run facilities.

Former interrogator Damien Corsetti was nicknamed the “King of Torture” whilst he was working at Bagram detention facility in Afghanistan (Risen, 2014, p. 171). He describes how as time went on, he started his own experiments to try to find new ways to break prisoners more quickly:

I used a combination of shit that I had seen during the handoff from the group of interrogators that had been there before, and some that I came up with. Like putting a guy at a 45 degree angle with your body straight and your head against the wall, I came up with that. I sat down and I was like, the knees [another stress position] aren’t doing it enough for me anymore. It’s not quick enough. What can make them feel that fucking 20 minute knee pain in about two minutes? And I figured that out, I sat there in the interrogation booth, and put myself in different positions, and I did this and it was like, oh, this one fucking sucks. So then you go and share it with other people, and you go, hey guys, I just discovered this, it’s great. It’s like prison experiments, what’s tolerable to you over time becomes more tolerable, and limits get pushed further. You don’t even think about it (as cited in Risen, 2014, pp. 171-172).

Indeed, the conditions of confinement and the methods of interrogation at Guantanamo and other US prisons all mirror the DDD and SERE methods of ‘interrogation’. The destructive nature of the psychological techniques employed has

been ongoing, and whilst the public focus has been on torture techniques such as waterboarding, little attention has been drawn to the psychological methods. Many experts such as Dr Metin Basoglu (2009), now contend that psychological techniques such as humiliation and exposure to aversive environmental conditions have the same impact as physical torture, if not worse (Başoğlu, 2009; Basoglu, Livanou, & Crnobaric, 2007; Medical Reporter, 2009; Reyes, 2007). These techniques are much more insidiously destructive because there is not only the complete annihilation of the victim or survivor, but also an additional element of silence – you cannot see the scars and the public has to take the victim's word for it – which is made extremely difficult when they are called terrorists, liars or 'evil' in the public domain as is discussed in Chapter Five and Chapter Six.

Military Commissions

I objected strongly to the Military Commissions Act that was drafted by the Bush Administration and passed by Congress because it failed to establish a legitimate legal framework... – President Obama comments on the 2006 *Military Commissions Act* (Obama, 2009b, p. 1)

On 13 November 2003, then Commander-in-Chief, President Bush, signed a Presidential Military Order declaring that foreigners captured by the US could be tried by military commissions (Denbeaux & Hafetz, 2009). US Military Commissions are only applicable to non-US citizens due to the fact that US citizens have constitutional protections, such as the right to a fair trial and the presumption of innocence. The US Military Commissions are unlike any normal war crimes tribunals, and whilst they are supposedly based on the UCMJ, they lack the same fair trial protections. For example, children are allowed to be prosecuted, a practice prohibited under international law (Duffy, 2005). The system was created specifically to try those whom the Bush Administration deemed would not be afforded protections under the GCs (Duffy, 2005).

Military Commissions have been widely condemned by the international legal community, and several systems have been tried and replaced as a result of their failure to comply with international fair trial protections (Duffy, 2005; Nicholson et

al., 2007).⁴⁰ The UN joined the condemnations when Martin Scheinin, the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated “the MCA [Military Commissions Act], contains a number of provisions that are incompatible with the international obligations of the United States under human rights law and humanitarian law” (Scheinin, 2006, p. 1). Close allies of the US Government have also been critical. The former UK Attorney-General Lord Goldsmith would not allow UK citizens to be subjected to a system that would not afford a full and fair trial, and Lord Steyne likened Military Commissions to a kangaroo court which makes a mockery of justice (“UK calls for Guantanamo closure”, 2006). Even President Obama expressed his displeasure with the system, remarking that the 2006 MCA was “fatally flawed” and that it “failed to establish a legitimate legal framework” (Obama, 2009b, p. 1).

The reason why there has been such an outcry over commissions is because of the overtly unfair processes and the fact that they are tainted by torture of the prisoners (Colson, 2009). In the *Hamdan* case, Chief Justice Stevens’ verdict noted that Military Commissions were not only unfair and illegal under both military law and the GCs, but that the executive was bound by the rule of law and does not hold a blank cheque (*Hamdan v Rumsfeld*, 2006). This is because successive Military Commissions have allowed for retrospective and invented charges, hearsay evidence, evidence obtained under ‘coercion’, the admission of secret evidence that the defendant is prohibited from seeing, and extensive political interference (Colson, 2009; Denbeaux & Hafetz, 2009). For example, the Secretary of Defense has the power to alter the rules of evidence as they see fit (Denbeaux & Hafetz, 2009). Rules and procedures are decided before they are codified, and have been changed in order to ensure the success of prosecutions. There is no independence because the judge, defence and prosecution all work for the US Government. There is no presumption of innocence, considering that the US Government has publicly stated that the men detained are terrorists and the worst of the worst. Defence lawyers have lamented

⁴⁰ Military commissions were deemed unconstitutional in 2006, so President Bush rushed through a 2006 *Military Commissions Act*. This has since been replaced by President Obama’s 2009 *Military Commissions Act*. No matter how many systems are put in place the same issues of unfairness remain.

that the iguanas who call Guantanamo home had more legal protection as a protected species than Guantanamo inmates (Denbeaux & Hafetz, 2009, p. 133).

Criticism has also come from both defence counsel and former military prosecutors (Denbeaux & Hafetz, 2009). Emails were leaked from the Office of Military Commissions in 2005 that quoted former prosecutors as saying that the Military Commissions members were handpicked and that the process was “rigged” to secure convictions (Gawenda, DeBelle, & Shiel, 2005, p. 1). Former military prosecutor Major Preston was so troubled by what he saw that he was awake at night worrying about what they were doing (Gawenda et al., 2005). A leaked conversation has a Bush Administration official stating that they could only have convictions, and definitely no acquittals (Horton, 2008). Defence counsel, Yvonne Bradley, stated that she “had quickly learned that the only real goal of the military commission system was to establish a rigged court that would guarantee convictions”, because of the fact that the system was made up as they went along (as cited in Denbeaux & Hafetz, 2009, p. 173). Even if a prisoner was found to be innocent, under the Military Commission rules, they could still be held indefinitely.

Many military lawyers from both defence and prosecution teams have resigned in protest at the system, citing not only the unfairness of the process, but the political interference in all of the cases (Denbeaux & Hafetz, 2009). Former chief military prosecutor, Colonel Morris Davis, resigned because of the direct political interference in the David Hicks case. He stated that the charge was a favour to the Australian Government and that if it were up to him, David would never have been charged (Leopold, 2011b). A more recent resignation was from Major Jason Wright who accused the government of “abhorrent leadership” on human rights and due process because of the torture committed against detainees, and said that the cases were “stacked” (“Guantanamo defence lawyer resigns, says U.S. Case is 'stacked',” 2014). The level of political interference to encourage lawyers to strike plea-deals has also occurred in several cases, including that of child soldier Omar Khadr (Hicks, 2010; Horton, 2007). In Khadr’s case, his civilian defence lawyer was cut out of the process of his plea deal (Edney, 2013). The plea deals in several cases have included gag orders to prevent the former prisoners from speaking about certain aspects of their detention for set periods of time (Hicks, 2010).

Defence teams have commented that they have been left to defend their clients effectively with their arms tied (Dratel, 2012). Detainees, because of their conditions of confinement and their treatment, were too concerned with being punished and having access to basic necessities such as food, to concentrate on issues relating to their defence (Dratel, 2012). Attorneys have been left to try and prepare a defence for clients who are so sleep deprived they are unable to concentrate (Dratel, 2012). Attorneys have limited access to defence materials, and evidence to back up their defence cases have been destroyed or lost (Denbeaux & Hafetz, 2009). Evidence relating to torture and ill-treatment is considered classified, and attorneys are unable to discuss issues pertaining to their own clients, including their treatment when subjected to the CIA extraordinary rendition program (Colson, 2009). Witnesses have been paid off in order to provide evidence of a certain slant (Edney, 2013). There is evidence that Guantanamo detainees have been drugged when charges were read to them. David Hicks' lawyers testified that he was provided with a cocktail of sedatives before he was read his charges (Dratel, 2012). The military guards admitted to his attorneys that they had given him drugs, but reason provided was that it was in order to "protect the officers from any of the detainees' reactions" (Dratel, 2012, p. 7).

There is no such thing as attorney-client privilege in Guantanamo. Legal materials have been stolen or photographed in detainees cells, nullifying any right to privileged communication (Denbeaux & Hafetz, 2009). Books pertaining to treatment and legal rights have been confiscated, including the Torture Papers which contains Bush Administration memos, and the GCs (Denbeaux & Hafetz, 2009). More recently, it was revealed that smoke detectors in the meeting rooms where attorneys met with their clients in Guantanamo were actually listening devices ("Guantanamo defence lawyer resigns, says U.S. Case is 'stacked'", 2014). Defence attorneys have limited access to clients, and they have been deliberately kept away from the isolated military base at crucial times, for example when plea deals were being struck (Edney, 2013).

Despite all of these issues, the Military Commissions remained in place under a revised *Military Commissions Act 2009* (USA) sanctioned by the President. The 2006 Act obtained three convictions, however, all three detainees Ali Hamza al-

Bahlul, David Hicks and Salim Hamdan, had their convictions subsequently overturned (Center for Constitutional Rights, 2013).

The Military Commissions system has also invented and reinterpreted several ‘war crimes’. For example, whilst attempted murder is usually not considered a crime in war time, the US Government has interpreted that anyone who was on the ‘battlefield’ during the time of the US invasion of Afghanistan in 2001 could be charged with this crime, effectively stripping the right to self-defence (Duffy, 2005). The charge of Providing Material Support for Terrorism has gained the most controversy, as it is so broad in nature that merely being in the vicinity could have a person being accused of providing material support, even if they have not been involved in terrorism, or related activities (Nicholson et al., 2007). The charge is important to the US Government because it is the only thing available with which to charge the majority of Guantanamo detainees. President Obama’s 2009 Task Force concluded that out of 154 detainees, 74 had been cleared for release, and another 54 would be held indefinitely without charge because there is not enough evidence to prosecute. Since then, even more have been cleared for release, and out of the around 800 people taken to Guantanamo, only a handful have ever been charged with a crime, and most who have been prosecuted, have had their convictions overturned (Center for Constitutional Rights, 2013). This presents a precarious position for the US Government.

Human rights groups and legal experts have contended for years that prisoners should be brought before recognised civilian court systems, or article three courts.⁴¹ However, it is clear that due to the way in which ‘evidence’ has been obtained, that is now impossible. The Military Commissions system continues to be a source of embarrassment for the Administration, as it is clear that the system is more about the appearance of justice, rather than the rule of law. The reason why the Obama Administration stuck to Military Commissions rather than US mainland courts is clearly as a result of the way so-called evidence was obtained. Torture remains the primary reason as to why Guantanamo prisoners will never be afforded an article

⁴¹ An article three court refers to US mainland federal courts that are under the jurisdiction of the constitution of the US.

three trial. To make matters more complicated for the Administration, some of the prisoners were subjected to the extraordinary rendition program.



Figure 4- Prisoner being terrorised by a military dog at Abu Ghraib in Iraq

(Source: US Military, 2004)

Extraordinary Rendition & Ghost Prisoners

We also have to work, through, sort of the dark side, if you will. We've got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we're going to be successful. That's the world these folks operate in, and so it's going to be vital for us to use any means at our disposal, basically, to achieve our objective – Former US Vice President Dick Cheney, September 16, 2001 (as cited in Open Society Justice Initiative, 2013, p. 7).

Well, there is a polite way to take people out of action and bring them to some type of justice. It's generally referred to as a rendition – Former CIA director Porter Goss (as cited in Grey, 2007, p. 18).

Alexander Solzhenitsyn described the Soviet Union's network of prison camps as a 'Gulag archipelago'. In Solzhenitsyn's writings, he explained how a parallel unseen world existed separate from the public reality. It was a world that swallowed up millions of prisoners, and many never emerged alive. Stephen Grey (2007) describes the US rendition programme as having "eerie similarities", although not on such a grand scale (p. 18). Rendition is a process whereby a person is sent to a third country or jurisdiction for the purpose of 'interrogation', or to be 'softened-up' for interrogation (Grey, 2007). Although it became more prominent as an issue of concern recently in the War on Terror, it has been a practice of long standing in the US intelligence field. Former CIA ex-deputy counsel John Rizzo commented in March 2014 that "Renditions were not a product of the post-9/11 era...[they] are actually a fairly well established fact in the American and world, actually, intelligence organisations" (Democracy Now, 2014). The first renditions can be traced back to the Clinton Administration in 1990s and were executed by way of a court order (Scahill, 2013). Most renditions during this period were for the purpose of extradition to the US so they could face trial, however, some were taken for the purpose of 'intelligence gathering' and flown to third countries where they had no legal rights (Scahill, 2013, p. 27).

In late 2001, however, the CIA started the rendition programme on those deemed terror suspects as part of the War on Terror. The clandestine programme was designed to be carried out far from the US mainland and its legal protections. The US Government programme of secret detention and rendition entailed the extrajudicial abduction and detention of thousands of people, the transfer of prisoners on flights to undisclosed locations, and the torture and unlawful interrogation of prisoners. The flights were branded as “torture taxis” by some in the human rights community (Scahill, 2013, p. 27).

The rendition programme in the War on Terror was closer to home than many would like to admit. It has been revealed that secret facilities operated on each corner of the globe including Africa, Europe, the Middle East and Guantanamo Bay. There are probably many facilities that will never be revealed. Fifty-four countries have been named as being involved in the programme, either directly, or through acquiescence, including Australia (Open Society Justice Initiative, 2013). This includes either “hosting CIA prisons on their territories; detaining, interrogating, torturing, and abusing individuals; assisting in the capture and transport of detainees; permitting the use of domestic airspace and airports for secret flights transporting detainees; providing intelligence leading to the secret detention and extraordinary rendition of individuals; and interrogating individuals who were secretly being held in the custody of other governments” (Open Society Justice Initiative, 2013, p. 6).

Although the full extent of both the rendition and secret detention programme largely remain secret, enough evidence has come to light to demonstrate the gross violation of numerous international human rights and humanitarian law treaties and conventions. President Bush acknowledged that the CIA held over 100 people in secret ‘black sites’ in 2006, as well as the sixteen so called ‘high-value detainees’ that were then transferred to Guantanamo, where they remain housed in another CIA black site called Camp 7 (Grey, 2007). The total number of people who have been subjected to both programmes is still unknown. The Open Society Justice Initiative (2013) documented the cases of one hundred and thirty six known cases in 2013. After a long and protracted battle, a 2012 Senate Select Intelligence Committee report into the CIA detention programme was released documenting the extent of the

programme, as well as the effectiveness of the techniques used. The US Senate voted to release parts of it, although they were redacted by the CIA (Glaser, 2014). The Senate report is horrific reading, and details the torture of prisoners in black sites that were far worse than first disclosed, including the torturing of prisoners to death, mock executions, placing prisoners in ‘coffin like boxes’ for extended periods of time, ice water baths, rectal feeding of prisoners to enact complete control over them, and one prisoner was treated for symptoms that are consistent with violent anal rape (SSCI, 2012). It also appears that the reason why the US Government fought against the release of the report was because it concluded that the techniques used on prisoners were not effective in gaining actionable intelligence, as was publicly claimed (SSCI, 2012).

In addition to the disclosures of the Committee, it is now well documented that those detained, including men, women and children, were subjected to conditions and treatment that amount to torture. Countless testimonies recall stories of being snatched off the streets, or abducted from family homes, bound and bagged, taken to remote parts of Europe or the Middle East and subjected to horrific torture. The documented torture methods employed against those detained range from beatings, electric shocks and sexual assault with weapons, to techniques that conveniently left no physical marks, such as the ‘German chair’,⁴² being placed in a ‘coffin like box’ for days at a time, and simulated asphyxiation (SSCI, 2012).

Testimonies also point to the torture of children by the CIA. In September 2002, the two children of a so-called high value detainee, Khalid Sheikh Mohammed, aged seven and nine, were abducted and held in Pakistan. At a 2007 Military Commission hearing, a Guantanamo detainee named Ali Khan provided testimony that his son Majid Khan was held at the same facility as Mohammed’s children. He said: “[t]he Pakistani guards told my son that the boys were kept in a separate area upstairs and were denied food and water by other guards. They were also mentally tortured by having ants or other creatures put on their legs to scare them and to say where their father was hiding” (as cited in US Military Commissions, 2007, p. 13). The testimony not only points to the torture and ill-treatment of children, but that it was

⁴² The German chair is a metal frame with no seat or back where a person is tied in uncomfortable positions.

sanctioned by the US Government. One of the Office of Legal Counsel memos described placing a detainee in a coffin like box with insects to exploit detainee fears, similar to what Khan describes as having been done to Mohammed's children (Greenberg & Dratel, 2005). This testimony is also similar to what others have said to the ICRC about their interrogations, even though the organisation was prevented from visiting black sites. Majid Khan also told his father that he was hooded, subjected to repeated beatings, being strapped to a chair for long periods of time in tight restraints, sleep deprivation, and what he described as a small room that was so tiny he could not stretch out his legs or lie down properly (US Military Commissions, 2007). This treatment only stopped when he said he would sign a statement that he was not even allowed to read. After being subjected to rendition, Majid Khan was eventually moved to Guantanamo Bay. He was abducted along with his mother and infant niece.

Whilst President Obama signed an Executive Order to close CIA facilities upon his election in 2009, there is a loophole that allows for rendition to occur on a 'short-term transitory basis', and there is a secret camp in Guantanamo Bay that continues to hold prisoners without independent oversight. It is in these facilities that the deaths of three men is said to have occurred during interrogation in 2006. In 2014, human rights lawyer Scott Horton (2014) released a report into the deaths that calls into question the official story that the three men suicided, which is the official government line. For example, the men were found with rags shoved down their throats with their hands and feet bound (Khan, 2008). The bodies were returned to the families almost a week after the deaths, with organs essential to reach a conclusive autopsy result removed, such as the brain and throat (Khan, 2008). The fingernails of the men had also been cut after their deaths, which would have removed any DNA evidence (Khan, 2008).

It has been well documented that people have been subjected to a number of horrific torture techniques whilst under secret detention and the extraordinary rendition programme. These include but are not limited to wall slamming, waterboarding, dryboarding (use of rags in throats rather than water), beatings with implements including rifle butts, wrenches, and sharp objects, electric shock (to all parts of the body, including genitals), threatened and actual sexual assault (by humans and

animals – dogs, and objects such as broomsticks, lights, batons, plastic implements), burning with chemicals, being forced to listen and watch others being tortured, sexual humiliation (interrogators smearing alleged menstrual blood on men, forcing them to wear women's underwear and dresses, being shown pictures of simulated rape or other violence on family members or other detainees), sensory bombardment with blaring music or other sounds such as croaking frogs, revving chainsaw engines, death metal music or children's music (Grey, 2007; Hicks, 2010; Mayer, 2008; McCoy, 2012; SSCI, 2012).

The 'enhanced interrogation techniques' used on the so-called high-value detainees led to the 'confessions' of a man named al-Libi. His 'confessions' were used as evidence that Iraq harboured Weapons of mass destruction, and were used as the impetus to go to war.



Figure 5- US Army SSG Ivan Frederick sitting on an Iraqi prisoner

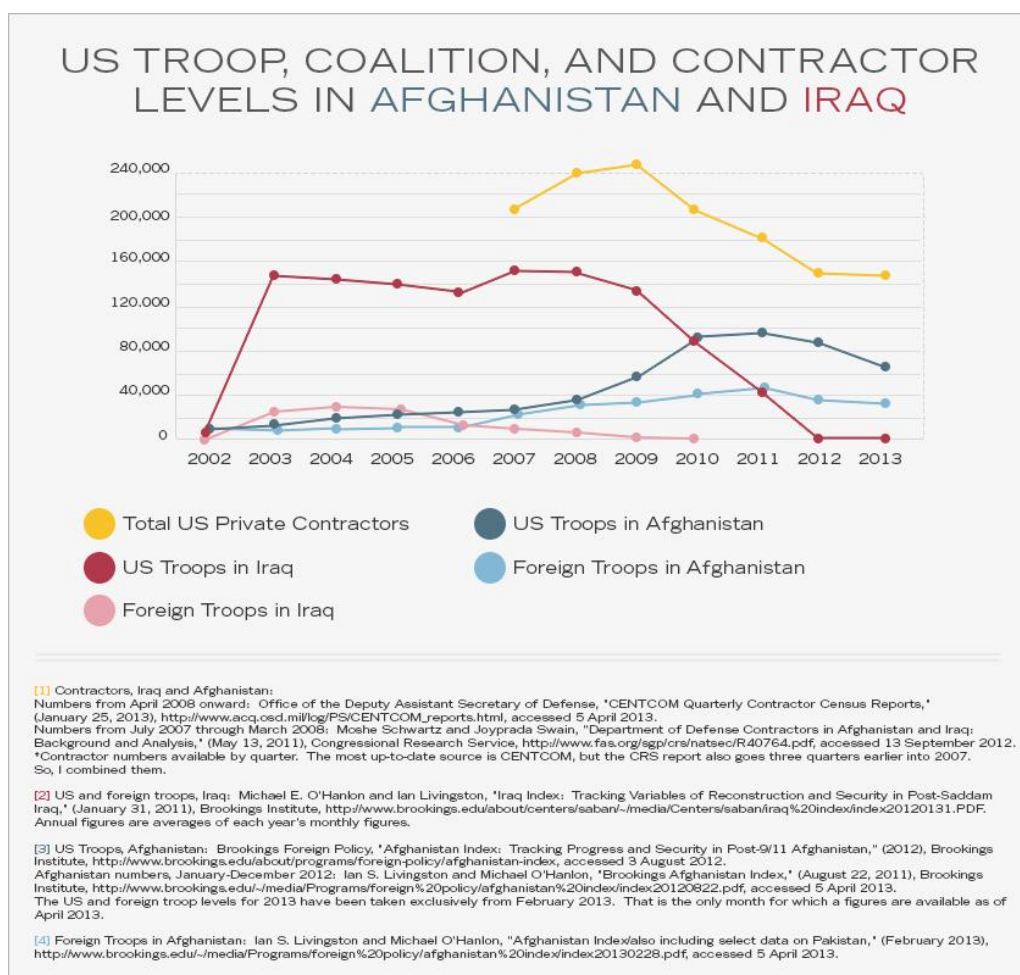
(Source: US Department of Defense, 2003b)

Private Military and Security Companies: Immunity and Contracted Torture

Fight terror with terror – Iraqi police commander to a US Embassy Official ("Searching for Steele," 2013).

The War on Terror has led to the considerable rise of private military and security contractors (PMSCs), as opposed to using traditional military forces, which is depicted in Figure 6. More armed PMSCs died in Afghanistan than US soldiers (Brown, 2014).

Figure 6- US Troop, Coalition, and Contractor Levels in Afghanistan and Iraq



(Source: Watson Institute for International Studies, 2014)

This rise in the use of PMSCs has occurred for several reasons. Private security is big business and the US Government is willing to pay big dollars in order to

outsource its dirty work. In addition, it is clear that PMSCs could engage in activity that the traditional military was unable to because of agreements put in place with host countries such as Iraq and Afghanistan (Pelton, 2006; Scahill, 2007). The Bush Administration bypassed many of the traditional rules of conflict by outsourcing the terror, and plenty of money was made in the process.⁴³ The contracts in Iraq and Afghanistan were deeply marred by corruption. For example, Kellogg, Brown and Root (KBR)⁴⁴ was a subsidiary of Halliburton for which former Vice President Dick Cheney was formerly C.E.O., and it also has ties to the Bush family (Yeoman, 2003). KBR was awarded the largest contracts in Iraq, including the contract for Restore Iraqi Oil (RIO) and many contracts in Afghanistan to establish base camps at Kandahar and Bagram, and in addition was contracted to build Camp 6 in Guantanamo Bay. It is estimated that between 2002 and 2012, the DoD has spent \$160 billion on PSMC's in Iraq and Afghanistan (Mehra, 2014, p. 1).

PMSCs provide various functions in conflict zones, including armed security, logistical support and intelligence (Cusumano, 2011). They have been deployed to every country involved in the War on Terror, particularly Iraq and Afghanistan. Whilst most contractors have been deployed for non-combat related activities such as construction, maintenance and transportation (Cusumano, 2011), the armed contractors have been implicated in numerous human rights violations, including torture, arms trafficking, child prostitution, sexual assault, fraud and extrajudicial assassination (Pelton, 2006; Scahill, 2007; Center for Constitutional Rights, 2010).

Many of the military security companies are made up of former Special Forces (SF) or other soldiers, and CIA agents. For example, Enrique Prado, the man who oversaw the assassination units for Blackwater and the CIA, is himself a former high-ranking CIA officer (Friedersdorf, 2012).⁴⁵

⁴³ As already discussed earlier in the chapter the expansion of Presidential power meant that the assassination of anyone deemed a terrorist was justified on the basis of national self-defence. More information on drones is covered in the postscript.

⁴⁴ KBR trades under a number of names and industries, including engineering, construction, Downstream (Petroleum industry), Private Military Contractor, Gas monetisation and infrastructure just to name a few ("KBR: A global engineering, construction and services company," 2010). From 1995 to 2002, KBR was awarded contracts to build military bases.

⁴⁵ *The Atlantic* reported that Prado was tied to seven murders carried out whilst he was working for a narco crime boss, and that the CIA protected him from investigation (Friedersdorf, 2012).

The war in Iraq was the epicentre of the rise of PMSCs, and many of the reported incidents relate to torture of prisoners whilst in their custody. Their role in Iraq included reconnaissance, target acquisition, intelligence, training Iraqi military and police, as well as interrogation and detention (Cusumano, 2011). Titan and CACI were outsourced as translators and interrogators at the now notorious Baghdad Central Correctional Facility, more commonly known as Abu Ghraib prison (Cusumano, 2011). Reports into the torture of prisoners demonstrate that individuals from both companies directly participated in the torture of prisoners (Taguba, 2004). CACI was contracted to Abu Ghraib to interrogate prisoners and obtain human intelligence. The Taguba Report into 'detainee abuse' details how employees from CACI provided military police with instructions on how to set 'conditions' to facilitate interrogations that were not in accordance with applicable regulations (Taguba, 2004, p. 48). In addition, the report points to Titan Corporation employees who were contracted as interpreters being involved in the 'abuses'.

These documented 'abuses' included threatening detainees with a charged 9 mm pistol, breaking a chemical light and pouring phosphoric liquid on detainees, pouring cold water on naked detainees, beating detainees with a broom handle and a chair, threatening male detainees with rape, sodomizing a detainee with a chemical light "and perhaps a broomstick", and using military dogs to terrorise the prisoners (Taguba, 2004, pp. 17-18). Military Police officers stationed at Abu Ghraib describe how military intelligence and private contractors asked their supervisors to "loosen this guy up for us", "make sure he has a bad night" or "make sure he gets the treatment" (Taguba, 2004, p. 19). This included coercing a prisoner to stand on a box with supposed electrodes attached to his fingers, toes and penis, saying that if he fell off the box he would be electrocuted. They also used a number of other techniques to keep prisoners awake including playing loud music, chaining them in uncomfortable positions, making them simulate sexual acts on other prisoners and engage in other sexually humiliating behaviours, including having to wear women's underwear on their heads (Taguba, 2004). Not only were PMSCs involved in the torture of detainees, they were also part of the cover-up. Reports demonstrate that they lied in their statements and failed to report the atrocities as they were occurring (Taguba,

2004). These practices went on for a number of years and some prisoners died as a result of being tortured, including being beaten to death.

James Steel and his Wolf Brigade

In addition to Abu Ghraib, the US Government used contractors to oversee interrogation facilities in other parts of Iraq. The investigative documentary '*Searching for Steele*' explores how the Pentagon contracted Colonel James Steele, a US Special Forces veteran of the Central American "Dirty Wars", to set up and oversee a number of secret interrogation facilities across Iraq in order to obtain information from those detained ("*Searching for Steele*", 2013). During the Dirty Wars, Steele oversaw a team of military advisors who trained El Salvador security forces in interrogation techniques in the 1980s. Under his watch, horrific human rights abuses took place.

During the Iraq war, the US Government provided funding, weapons and training to those who volunteered to become militia fighters to defeat insurgents, under the watch of former Major General David Petraeus ("*Searching for Steele*", 2013). Steele became a civilian 'advisor' to an Iraqi paramilitary squad called the Wolf Brigade which was formed in September 2004. The Wolf Brigade fought alongside allied forces in Mosul from 2004.⁴⁶ WikiLeaks documents reveal that US forces handed over their captives to the Wolf Brigade for 'interrogation' during raids in 2004 and 2005 (WikiLeaks, 2010b). They took over the public library in Samara and turned it into a detention centre. The Wolf Brigade has been reportedly involved in some horrific human rights abuses, including torture and mass killings. There are reports they targeted Palestinian refugees, raided Sunni homes and tortured detainees. Reporters have recounted testimony of US soldiers who stood by and did nothing when members of the Wolf Brigade beat and tortured prisoners, including listening to the "screams of prisoners all night long" and being told by US superiors not to intervene (Leigh & O'Kane, 2010; "*Searching for Steele*", 2013). They watched prisoners being "strung up like animals" over a bar and being tortured ("*Searching for Steele*", 2013). A US medic recalls that it was widely known that

⁴⁶ The Wolf Brigade was made up primarily of Shiites, and drew its recruits from Shia slums in Sadr city. They were paid around the equivalent of USD\$400 per month, which is comparatively large sum when taking into account the median Iraqi wage.

prisoners were being “beaten, shocked and... raped... brutalised” (“Searching for Steele”, 2013).

In a 2005 interview with Steele in Samara, *New York Times* reporter, Peter Maass recalled seeing blood dripping off a desk in an office and his interview being interrupted by the “terrified screams of a prisoner outside” (Leigh & O’Kane, 2010; “Searching for Steele,” 2013). Maass said that Steele stopped the interview because the screams were so loud, and went out of the room. Whilst he was gone, the screaming stopped.

The testimony of those tortured in Samara with the oversight of Steele is harrowing. One man recalls: “we would be blindfolded and handcuffed behind our backs. Then they would beat us with shovels and pipes. We’d be tied to a spit, or we’d be hung from the ceiling by our hands and our shoulders would be dislocated” (“Searching for Steele”, 2013). Another says “they electrocuted me, they hung me from the ceiling, they were pulling at my ears with pliers, stamping on my head asking me about my wife, saying they would bring her here...” (“Searching for Steele”, 2013). The prisoners also recall that torture techniques were changed in order to cover up the actions of the police. For example, they were told to stop dislocating the shoulders because prisoners would end up needing surgery when released. Former Iraqi Interior Minister General Muntadher al-Samai states that children were also tortured (“Searching for Steele”, 2013).

Steele’s role was not limited to oversight. He provided the Iraqi police with names of people to detain for interrogation. Steele would arrange for them to be transported to a US run interrogation centre near Baghdad airport. Witnesses note that Steele saw detainees hanging upside down by their legs, and that there was no way that he was unaware what was going on there (“Searching for Steele”, 2013).

The fact that the US military was handing people over to these torture facilities was widely known. An official military order called Fragmentary Order 242 (FRAGO 242) was handed down in 2004 that directed the US military not to investigate the torture of Iraqi’s by Iraqi’s, unless specifically ordered to by headquarters (Mooers, 2014). Captain Jarrell Southall of the US National Guard recalls coming across prisoners who had visible signs of being beaten and electrocuted, and were ordered

by US military headquarters to stand-down and not do anything. He said “the commander called us all in there together, and told us what we saw didn’t happen and to forget about it” (“Searching for Steele”, 2013).

However, WikiLeaks files show that by July 2005 Washington was informed of the torture that was committed by Iraqi police commandos. Steele himself wrote to Donald Rumsfeld warning that the police commandos, armed and financed by the US, “were effectively a Shia militia death squad” (“Searching for Steele”, 2013). Nevertheless, the police chief said to the US embassy official that they needed to “fight terror with terror” and that “their forces need to be respected and feared” (“Searching for Steele”, 2013).

One man who survived Samara and Nisoor Square said that people had died after being tortured and their bodies were dumped on the streets of Baghdad. At one stage, 3, 000 bodies a month were being dumped in the streets of Iraq, some so badly tortured that they could not be identified. These bodies were put in a dump in unmarked graves and no one has been held to account for their torture and murder. Steele and Petraeus left Iraq in 2005 but the legacy of torture remained.⁴⁷

Blackwater

Another prominent PMSC operating both out of Iraq and Afghanistan was Blackwater, which changed its name to Xe services, and is now known as Academi (Academi, 2014). Blackwater, which is described as the world’s largest mercenary army, was founded by Erik Prince, whom is said to be motivated by extreme right-wing ideology (Scahill, 2007). Blackwater operated under the guise of providing diplomatic security and training to local security forces, however, they were also known for their involvement in assassination and torture. For example, Blackwater had contracts with the CIA to oversee interrogations in Iraq, Afghanistan and other forums in the War on Terror (Scahill, 2007). Many of Blackwater’s actions remain unreported. The most prominently reported incident was the Nisour Square massacre, which was dubbed “Baghdad’s Bloody Sunday” (Scahill, 2014, p. 1). 17 civilians and police officers were killed and 20 people were injured when on 16 September 2007, Blackwater personnel opened fire on a crowded traffic circle

⁴⁷ Steele was presented with a distinguished service medal from Rumsfeld upon his return to the US.

(Mehra, 2014). It was this that led to the reprisal attacks in Fallujah. WikiLeaks revealed that this was not an isolated incident, and that Washington had already been warned of the activities Blackwater were involved in (WikiLeaks, 2010b). For instance, it was known that Blackwater guards were keeping automatic weapons in their rooms where they would often get intoxicated (Mehra, 2014).

Blackwater was also contracted by the CIA and the Joint Special Operations Command (JSOC) for more covert and sinister operations. Whilst the CIA was concerned with intelligence gathering, JSOCs mission was to kill or capture so-called high-value targets (Scahill, 2013, p. 178). This provided the members of Blackwater's SELECT division, who were made up of former US Special Operations, with a central role in the operations (Scahill, 2013). In Afghanistan, Blackwater controlled four Forward Operating Bases, which were used by the CIA to conduct Special Operations missions with the benefit of deniability. Retired US Army Intelligence Officer Anthony Shaffer said that the reason why Blackwater was used was "to avoid oversight" (as cited in Scahill, 2013). Ex-Special Forces personnel have confirmed that Blackwater was contracted to conduct assassinations as early as 2008 in Afghanistan (Friedersdorf, 2012). It also trained police, security forces and militia on the ground, including the Pakistani Frontier Corps, the federal paramilitary force responsible for strikes in tribal areas (Scahill, 2007).

Blackwater/Xe was also contracted by the CIA and JSOC as part of the drone program, which is discussed later in the chapter (Risen & Mazzetti, 2009). It is responsible for arming countless drones deployed in Afghanistan and Pakistan that have killed and maimed innumerable civilians in the extrajudicial assassination program (Scahill, 2007; 2013). It has been reported that the company have been able to subvert accountability for the drone activity by ensuring that, whilst the drone is manned and operated by the PMSC, at the point of pushing the 'fire' button, the US military officially takes over command (Cusumano, 2011).

PMSCs have also been involved in secret prisons and other torture facilities in Afghanistan. The Salt Pit is widely known as a CIA black site, or dark prison, and is located north of Kabul. Captives who have survived their time in the extrajudicial prison have documented being beaten, injected with drugs and sexually humiliated. A man named Gul Rahman was killed in the Salt Pit, reportedly from hypothermia

after being left chained to the floor of his cell overnight (Siems, 2011). Rahman was buried in an unmarked grave, and his family was never told what had happened to him until they read about his death in a newspaper two years later (Siems, 2011). A researcher and photographer of covert black-sites said he located and photographed the facility only after he saw a goat herder wearing a KBR baseball cap (Paglen, 2009, p. 2).

Immunity and a lack of oversight mean that most of the activities of PMSCs remain unaccounted for. Because of the arrangement between the US and the Iraqi Government, Blackwater and other PMSCs operating in Iraq and elsewhere continue to operate largely with immunity from prosecution for all criminal activities they were involved in, including the torture and murder of civilians (Reese, 2014).

This culture of immunity has also extended to cover another clandestine group, the US Joint Special Operations Command (JSOC).

Joint Special Operations Command

Contractors and especially JSOC personnel working under a classified mandate are not [overseen by Congress], so they just don't care. If there's thirty-four [other] people in the building, thirty-five people are going to die. That's the mentality...They're not accountable to anybody and they know that – Anonymous Military Intelligence Source (as cited in Scahill, 2013, p. 252).

JSOC was another covert military force expanded as part of the War on Terror (Naylor, 2015). Also known as 'snake eaters' within the covert operations community, JSOC is made up of personnel from a number of different elite Special Forces units under the banner of the US Special Operations Command (USOCOM). However, they operate differently to the normal Special Operations units because their operations are covert. They have been described as one of the most lethal and nationalistic organisations; one JSOC personnel member described themselves as "people that have a true belief in the nation and our ideals" (as cited in Scahill, 2013, p. 181). JSOC has been implicated in a number of cases of crimes against humanity, including torture and extrajudicial assassination, and because they operate on such a

secretive level, and they have the protection of the elected Administration, their actions have been carried out with impunity.

JSOC takes orders directly from the US President or Secretary of Defense, and is responsible for a host of ‘counter-terrorism operations’, most notably, the detention and interrogation of those considered ‘terror suspects’ in Iraq, Afghanistan and Guantanamo Bay and the assassination of Osama Bin Laden (Naylor, 2015; Scahill, 2013). JSOC has not only a military function as specialist commandos, but also an intelligence gathering role; hence their involvement in the detention of so-called high value detainees and their work with the CIA. Their job is to identify targets, track, fix the location and kill, without being detected (Kelly, 2013). JSOC has been described as operating effectively as a paramilitary arm of the Administration (Scahill, 2013, p. 181). A retired Special Forces officer, Colonel W. Patrick Lang, described JSOC as “sort of like Murder, Incorporated” (as cited in Scahill, 2013).

The Crisis Intelligence Action Center (CIAC) based in Virginia was opened in 2011 and serves as the command post for all JSOC operations around the world (Ambinder & Grady, 2013). It also has bases in Qatar and Kenya. Whilst they predominately operate in Iraq and Afghanistan, they also have operations in Somalia, Algeria, the Philippines, Indonesia, Yemen, Pakistan, Thailand, Mali, Columbia, Peru, as well as European and Central Asian countries (Scahill, 2013, p. 183). Since August 2014, JSOC was under the command of Raymond Thomas, formerly the Associate Director of the CIA for Military Affairs. Thomas succeeded Joseph Votel who is now the head of USSCOM. He is succeeded by William McRaven (Naylor, 2015).

With global financial pressures and the perceived need to counter apparent ‘terrorist threats’ since September 11, there has been a clear shift in US policy towards clandestine espionage and covert action. It is estimated that since former Vice-President Dick Cheney and Defense Secretary Donald Rumsfeld directed JSOC operations in 2001 with about 2,500 personnel, JSOC expanded to approximately 25,000 by 2013 (Kelly, 2013). This formed part of a global strategy to “stay small but highly effective” in relation to overseas intelligence gathering for the DoD (Miller, 2014, p. 1). The amalgamation of intelligence and military personnel, and the preference for covert missions, rather than traditional military deployments, was

part of the 2012 Pentagon plan to establish an espionage network under the Defense Intelligence Agency (DIA) to train and deploy over 500 undercover officers to work alongside JSOC and the CIA, and obtain orders directly from the DoD (Miller, 2014).⁴⁸ Under the direction of a former CIA and Pentagon intelligence figure, Michael G Vickers, and approved by Defense Secretary Leon Panetta and retired Army General David Petraeus, the manifestation of this policy was the creation of the Defense Clandestine Service or DCS. CIA agents are already deployed to various US embassies to pose as diplomats. This plan would see the emergence of newly trained spies to specifically work alongside JSOC and the CIA with a focus on counterterrorism and national security (Miller, 2012). Whilst the CIA and JSOC are authorised to engage in drone strikes and political sabotage, the DIA mainly serve under military units as a cover to try to “persuade their foreign counterparts to become American informants” (Miller, 2014). The DCS officers receive training at the Farm with the CIA (Miller, 2014). Although the final numbers remain classified, a 2014 report notes that the project was minimised because of Congressional concerns about the purpose of the clandestine practices, and the lack of oversight and funding. They are, however, still operating with JSOC and other private security contractors.

JSOC are responsible for a number of covert projects or ‘kinetic operations’, from capturing and interrogation, to surveillance and other intelligence related activities, and capture/kill assassinations (Naylor, 2015). One of the most secretive elements of JSOC is called Task Force Orange, or The Activity (Ambinder & Grady, 2013), and this is said to be the basis of its Australian counter-part, 4 Squadron (Welch & Epstein, 2012). The Activity collects signals and human intelligence before the commandos are sent in. Part of the intelligence role of JSOC is to collect human intelligence, and in order to collect this material, they conduct their own covert interrogation program.

JSOC were trained in the reverse-engineered SERE techniques and were brought into a classified interrogation program called MATCHBOX, or its unclassified name of COPPER GREEN (Ambinder & Grady, 2012). MATCHBOX provided for direct

⁴⁸ This was apparently in response to a classified study by the Director of National Intelligence that found key intelligence priorities were being neglected due to the divide between the Pentagon’s focus on military matters and the CIA’s “extensive workload” (Miller, 2014).

authorisation to use ‘aggressive’ interrogation techniques such as stress positions, barking dogs and sleep deprivation (Ambinder & Grady, 2012). These techniques were used at all of the detention facilities under the control of JSOC.

One of these facilities was Camp Nama in Baghdad, where JSOC were reportedly responsible for the torture of prisoners under the watchful eye of then commander, General Stanley McChrystal (Cobain, 2013). Former UK defence personnel report horrific abuses including Iraqi prisoners being hooded, kept in small cells the size of dog kennels, electroshocked and being taken to sound-proof shipping containers, only to emerge severely distressed (Cobain, 2013). JSOC also were responsible for some of the interrogations in Bagram Airbase and Guantanamo Bay (Ambinder & Grady, 2012).

There is a secret camp in Guantanamo known as Camp No, or Penny Lane (Horton, 2014). As previously discussed, it is here that some believe three men were killed at the hands of the CIA or JSOC (Horton, 2010). A series of cover-ups surrounding the deaths was discovered in 2014 when Seton Hall Law School and Scott Horton uncovered documents that showed contradictions in relation to official accounts provided by the military and the NCIS who were the investigating authority (Kaye, 2014c). The official government line is that the three men simultaneously suicided by hanging, despite their hands being bound and cloth material or socks being found shoved deep in their throats. This is consistent with a torture technique called dry-boarding which induces asphyxiation.

Besides systematic torture, JSOC also operate on the basis of kill-lists. Just like the deck of cards handed out to the military when they were attempting to capture Saddam Hussein, the Bush and Obama Administration’s provided lists of targets to JSOC for their kinetic operations. A JSOC operative has stated that the lists keep expanding, no matter how many people they kill (Wolf, 2013). This was part of their role in Afghanistan. US investigative journalist, Jeremy Scahill, found that JSOC members were conducting night raids in the tribal belt where they had killed women and children. In order to protect their identities and operations, they went as far as to cut bullets from the bodies (Scahill, 2013). JSOC was also the group responsible for the “wedding party incident” where hundreds of civilians died (Priest & Arkin, 2011b).

JSOC does not work alone, and there is evidence that private security contractors were involved in many JSOC clandestine activities. Blackwater was contracted to work for JSOC in Afghanistan and Pakistan as part of the US Government drone program. Blackwater SELECT members worked in “hidden bases in Pakistan and Afghanistan, where the companies contractors assemble and load Hellfire missile and 500-pound laser-guided bombs on remotely piloted Predator aircraft (Scahill, 2013). Blackwater also was stationed at Bagram Airbase where they assisted in “snatch and grabs” of so-called high-level targets (Scahill, 2013, p. 251). In addition, they helped plan missions for JSOC against the Islamic Movement of Uzbekistan. The level of impunity proved to be an issue wherever contractors like Blackwater or JSOC went, with bodies of civilians turning up in massive numbers.

The President’s Drone and Assassination Program

The world is a battlefield and we are at war. Therefore the military can go wherever they please and do whatever it is they want to do, in order to achieve the national security objectives of whichever Administration happens to be in power – Anonymous JSOC operative (as cited in Scahill, 2013, p. 183).

Whilst already operating in the final years of the Bush Administration, the drone program expanded dramatically after the election of President Obama in 2009 (Scahill, 2013). Under the Bush Administration, the main focus was to capture and ‘interrogate’, however, Obama took a different approach to counter-terrorism by focusing on capture/kill.

The drone ‘signature strike’ program is run by the CIA and JSOC, and they also employ PMSCs, such as Blackwater/Academi (Scahill, 2013). The authority to strike usually comes from the Director of the CIA, whoever that may be at the time. The use of drones to assassinate people outside a declared war-zone has come under great scrutiny, especially from human rights advocates. Killing without trial contravenes long held democratic rights including due process, and the cornerstone of the right to life. However, because the US Government is not a party to the *Rome Statute*, it continues to remain unaccountable. US Congress gives the Executive, in this case the President, the power to kill anyone deemed a terrorist, without trial (Ambinder &

Grady, 2013). It is hard to provide evidence of innocence after being killed by a drone.

The day after President Obama was elected in 2009, the first drone strike under his watch killed between seven and fifteen people, most of them civilians (Scahill, 2013, p. 249). The second strike hit the wrong house in South Waziristan and killed between five and eight civilians, at least two of them children (Scahill, 2013, p. 249). These ‘mistakes’ were certainly not an anomaly as the civilian casualties and loss of life continued and broadened under the Obama Administration; strikes on Pakistan almost occurred on a weekly basis in the first part of his presidency (Scahill, 2013). As of March 2014, the drone program had killed around 2,600 people, as far as human rights organisations can tell (Tayler, 2014). Part of the problem in obtaining reliable data is that many of the drone strikes are carried out in small villages where it is unlikely that any international observers are recording figures. The other problem with obtaining comprehensive data is the fact that much of the drone program has been carried out in the shadows in Syria, Pakistan and Libya, under the veil of the State Secrets Privilege.⁴⁹

The Obama Administration largely prevented the release of official data that detail the casualties of the drone strikes, or the number of targeted killing operations (Tayler, 2014). In addition, President Obama was directly involved in locking-up journalists who have reported strikes that have killed the wrong people (Scahill, 2013; Wolf, 2013). For example, after the US Government reported that they had killed al-Qaeda members in al-Majala in Yemen, independent journalist Abdulelah Haider Shaye visited the town. He found remnants of Tomahawk cruise missiles and cluster bombs, with the label ‘made in the USA’. Fourteen women and twenty one children were killed. After reporting what he found, Shaye was abducted, beaten and imprisoned by Yemeni security forces, accused of terrorism and imprisoned. President Obama personally called President Saleh to express his ‘concern’ over the journalist (Scahill, 2013). Shaye was subsequently convicted of ‘terrorism’ related charges, and was sentenced to five years imprisonment in 2010 (Saleh, 2013). He

⁴⁹ State Secrets Privilege is an evidentiary rule known to US law which allows the Government to block cases that may disclose information that endangers national security.

was eventually released in 2013 to serve out the remainder of his sentence under house arrest (Saleh, 2013).

Among the concerning issues that are apparent as part of the drone program, is the fact that these intelligence and military contractors can target anyone, without probable cause. Under the drone program, the CIA deems that “military aged males” who were in a specific area that may have had contacts with a suspected militant or terrorist could be the target of a drone strike (Scahill, 2013, p. 249). JSOC also has its own kill lists, and may work with the CIA in hitting a specific ‘target’. In both programs, no positive identification process is needed.

Known drone strikes include the targeting of a wedding in Yemen, the killing of a family on their way home from a local market, and an attack that killed 42 Bedouins who were sleeping (Tayler, 2014). However, it was only when a US citizen was killed that the program gained more prominent media attention. Anwar al-Awlaki was a US citizen who was killed by a drone strike whilst in Yemen in 2011 (Ambinder & Grady, 2013). A few weeks after his assassination, his son 16 year old Abdulrahman was also killed by a US drone, reportedly whilst he ate lunch with his father’s friends (Ambinder & Grady, 2013). The father of al-Awlaki brought a case before the US Government for killing his son, however, the State Secrets Privilege was invoked. The government has argued in several subsequent cases that the need for government secrecy outweighs any public evidence that a crime has been committed, including in the case of torture and extraordinary rendition (Ambinder & Grady, 2013). After years of court battles, the memos outlining the US Government’s justification for killing al-Awlaki were released.

The first heavily redacted memo outlines that the US president has the authorisation as commander in chief to use his authority to “protect the country, [and] the inherent right to national self-defence under international law” under the AUMF (Department of Justice, 2011a, p. 1). The second memo, released in September 2014, argues one of the more controversial aspects of the memo – that un-uniformed ‘enemy combatants’ are acceptable targets, even though the CIA itself does not wear uniforms. The memo argues that the CIA operatives who might be considered as enemy combatants by opponents are not war criminals whilst they comply with international law (Leopold, 2014b). The AUMF and the “public authority

justification” is again used as justification for the CIA killing an American citizen (Department of Justice, 2011b, p. 1). According to this memo, the CIA assassinations are lawful on the basis that they were authorised by the President (Department of Justice, 2011b). These justifications are insufficient according to international law experts (Leopold, 2014b).

The drone program continues, and many of its operations are coordinated from the Ramstein base in Germany (Solomon, 2016). It was reported that in 2012 President Obama provided a \$250 million contract for Blackwater/Academi to provide services to the CIA (Friedersdorf, 2012). It is certainly clear that it is the preferred method of choice for the Obama Administration, which is troubling considering that it not only operates with impunity, but also in the shadows.

Conclusion

This chapter has explored the birth of the so-called War on Terror in order to provide a context for the research, and as an introduction to many of the covert contexts in which torture occurs. Under the guise of national security, the Bush Administration overturned years of legal protections against torture, extrajudicial execution, war and unlawful detention in order to carry out the aims of the Administration. Practices that were both contrary to international law and morally reprehensible were sanctioned. This opened the door to a dark and murky underworld led by the Bush Administration, and carried out by the CIA and paid contractors. Torture was integral to all of the Bush Administration’s actions, whether in Iraq, Afghanistan, Guantanamo Bay or in secret black sites. But the US Administration was not alone. Several other countries joined the ‘coalition of the willing’ as part of the War on Terror. The UK Government played a major military role in the conflicts under the watch of former Prime Minister Blair, and assisted in the torture and interrogation program, including CIA rendition (Open Society Justice Initiative, 2013). The following chapter explores Australia’s involvement in the military interventions in both Iraq and Afghanistan and the role it played in the torture and detention programs led by the US Government. The background to the Australian Government’s involvement becomes integral to the analysis of outrage management techniques explored as part of the analysis in Chapter Five.

Chapter 3: Australia's role in the War on Terror

Australia has made a choice with terrible consequences. We have chosen lies instead of honesty; self-interest instead of social conscience; hypocrisy instead of decency. We have chosen a government that shows contempt for human rights...that has made us relaxed and comfortable only by anaesthetising the national conscience – Julian Burnside QC (2007, p. 130).

This chapter explores Australia's involvement in the War on Terror to provide background and context for the research. Along with the UK, the Australian Government was one of the most deeply embedded states to take part in the US-led War on Terror. Australia participated militarily in the conflicts in both Iraq and Afghanistan, and it is evident that certain Australian officials were involved either directly, through acquiescence or cover-up in the torture and ill-treatment of people detained in the conflicts, including Australian citizens. In addition, there is evidence of a direct link between Australian Special Air Service (SAS) forces, black sites, torture and rendition.

The chapter introduces the context of Australia's involvement, including the military participation and the legal situation relating to the detention and treatment of captives in Iraq and Afghanistan. The deep involvement of an embedded Australian Defence Force member in the Abu Ghraib torture saga is explored. In addition, the background and role of the Australian Government in relation to three main cases are introduced; including those of Mamdouh Habib, David Hicks and Joseph Thomas. The chapter then examines the domestic context, including the response of the Howard Government that saw the passing of a raft of counter-terrorism laws. Finally, the covert joint operations of the Australian and US military are introduced in light of revelations of the clandestine operations of the SAS 4 Squadron and presence of the US Joint Special Operations Command (JSOC) in Australia.

Australia's Military Involvement

The military alliance between Australia and the US has long been robust. Australia has hosted US military presence since the early part of the Second World War in 1942 (McCaffrie & Rahman, 2014, p. 89). As of July 2014, the US military has

access to twenty-four major facilities in Australia, including training areas, ports, communications stations and the joint defence ‘facilities’ at North West Cape and Pine Gap (McCaffrie & Rahman, 2014, p. 88).⁵⁰ Pine Gap is described as the most controversial of all bases as it is used for CIA activity (McCaffrie & Rahman, 2014; Rosenberg, 2011, p. 97). Because of the level of secrecy concerning US military bases, little is known about their functions. Despite strong voices of opposition to the presence of bases in Australia during the Cold War period – in direct response to concerns that Australia would become a target for nuclear war – the military alliance is, according to some scholars, generally accepted in the broader community because of the secrecy that surrounds it (McCaffrie & Rahman, 2014, pp. 96, 98). Indeed, the Australian Government’s foreign policy has been intimately tied with US Government interests which aims to achieve geostrategic dominance, and this closeness has only increased over the years (McCaffrie & Rahman, 2014, p. 97).

Former Prime Minister John Howard was in Washington on 10 September 2001, attending a celebration marking fifty years of the ANZUS treaty (Manne, 2006). The ANZUS treaty, initially signed in 1951, binds the US and Australia (and to a lesser extent NZ)⁵¹ to cooperate in defence matters and solidified the strong political and military ties between the two nations.⁵² As he was still in the US when the events of September 11 occurred, the already close relationship that the former conservative Prime Minister shared with President Bush only strengthened. The events of 9/11 were said to impact John Howard “deeply” (Manne, 2011, p. 15) and, given the already strong ties between US and Australia, the Howard Government invoked the ANZUS treaty which formed the basis of Australia’s engagement in the US-led War on Terror. According to former US National Security Advisor Condoleezza Rice, when war with Afghanistan was signalled as not far off, Australia “clamoured” to be invited to participate in the invasion force (Manne, 2011, p. 16). Professor of politics, Robert Manne (2011), stated that this was “the moment John Howard had

⁵⁰ There was also a base at Nurrungar, near Woomera however, this was closed in October 1999 (McCaffrie & Rahman, 2014, p. 94).

⁵¹ In 1985, a disagreement arose because New Zealand refused to allow US war ships into its ports for fear that they were carrying nuclear weapons. The US refused to confirm whether it was carrying the weapons. This created tensions between the two countries, even to the point where the US declared NZ a friend but not an ally.

⁵² McCaffrie and Rahman (2014) state that ANZUS was enacted in response to concerns raised by the Australian Government in relation to the US-Japan peace treaty, and the increased bases associated with strategic reconnaissance in the southern hemisphere (p. 93).

been waiting for his whole political life” (p. 16). Consequently, Australian troops participated in the wars both in Afghanistan and Iraq.⁵³

Detention and Treatment of ‘Detainees’

Australia’s involvement in the detention and interrogation of those detained in the US-led War on Terror is not widely known. Australian forces played a central role in the capture and detention of those deemed terror suspects in both Iraq and Afghanistan as part of the Coalition. The role of certain military members and Australian officials in the cover-up of the torture of prisoners in Abu Ghraib, Guantanamo Bay, black sites or other detention facilities has been documented in a number of cases (Brooks, 2014; Public Interest Advocacy Centre [PIAC], 2011). The involvement goes to the top levels of both the Australian and US Governments, as well as Australian Defence Force (ADF) members who are now in high ranking positions. Whilst the formal detention policy provided that the ADF should hand over detainees as soon as possible to the US or UK, there have been instances where Australian military personnel have been closely linked to a number of events that violated international law.

Formal Arrangements

From the outset of military operations it became increasingly clear that there were disagreements between the US and Australia about how those detained by Australian forces should be treated. The Australian military assumed that the US would be responsible for any prisoners of war and that they shared the same view as to the application of the *Geneva Conventions 1949* (GCs). The Australian military has long operated within the confines of the GCs, however, the Bush Administration’s interpretation of Article V of GC (IV) *relative to the Protection of Civilian Persons in Time of War 1949*, caused some disagreements, as it provides that some detainees are able to be held outside the protections of the GCs in certain circumstances.⁵⁴ Due

⁵³ A 2011 article by Doran and Anderson sets out a case for Australian war crimes trials based on the alleged involvement of Australian forces in the perpetration of war crimes. Doran and Anderson point to the Royal Australian Air Force (RAAF) support of the use of cluster bombs on civilian populations during the initial Iraq invasion in March and April 2003 and the Australian responsibility for the assault on Fallujah in 2004 (Doran & Anderson, 2011, p. 287).

⁵⁴ This includes being “definitely suspected of or engaged in activities hostile to the security of the State...or Occupying Power” (as cited in Public Interest Advocacy Centre, 2011c, p. 12).

to the skewed interpretation of this clause, as well as other dubious legal advice, the US Government believed that suspected al-Qaeda or Taliban forces should not be afforded protections under international law (Duffy, 2005). One Australian military officer, Colonel Mike Kelly, noted that the US was abusing article V, and “stretching it to breaking point” ([Redacted], 2004, p. 2).

In response to these differing views, and with the onset of Operation Anaconda in Afghanistan, the Chief of the ADF, Admiral Barrie, prepared an interim detainee policy. After negotiations between the US and Australian Governments, the final agreement stated that the US military was to take full legal responsibility of any detainees and that officially the ADF was not “regarded as having formally detained captives if US soldiers were present with the ADF” (Public Interest Advocacy Centre, 2011a, p. 10). The subsequent impact of this policy was that the presence of just one US military representative meant that Australian forces could, in their flawed logic, negate any legal responsibility for the detention and treatment of those captured. It also allowed the US Government to designate captives as ‘unlawful enemy combatants’, and therefore effectively hold them outside of the GCs. This agreement between the US and Australia bridged both the conflicts in Afghanistan and Iraq.⁵⁵

The Trilateral Arrangement

Seeking to clear up any jurisdictional issues between the governments involved, on 23 March 2003, the Australian, US and UK Governments signed a Trilateral Arrangement entitled *An arrangement for the transfer of prisoners of war, civilian internees, and civilian detainees between the forces of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and Australia*. This agreement stated that:

- the arrangement will be implemented in accordance with the Geneva Conventions and customary international law;

⁵⁵ Indeed, Australia played a role in the detention of Iraqi citizens. Australian forces detained Iraqi captives on the HMAS Kanimbla in the early days of the war, and relied on the agreement that was made regarding detainee treatment with the US (Public Interest Advocacy Centre, 2011a).

- a Detaining Power can transfer prisoners of war, civilian internees and civilian detainees to an Accepting Power;
- a Detaining Power will retain full rights of access and can request the return of any detainee transferred to the Accepting Power;
- the release, repatriation or removal to territory outside Iraq of a detainee can only take place with the agreement of both the Detaining Power and Accepting Power;
- the Detaining Power is solely responsible for classifying a detainee as a POW under the Geneva Conventions; and
- where there is doubt as to which party is the Detaining Power, *all parties are to be jointly* [emphasis added] responsible
(as cited in Public Interest Advocacy Centre, 2011a, p. 13).

The late signing and lack of implementation of this arrangement by the Australian Government had a profound impact on the way in which the War on Terror played out in the public arena, and perceived responsibilities in the theatre of war. The arrangement was not made public until 2011, after the Australian Government had repeatedly told the public that it was not the detaining authority in Iraq and Afghanistan. Human rights groups raise the possibility that it was never the Australian Government's intention to invoke the agreement, and instead always hand over detainees to US or UK jurisdiction (Public Interest Advocacy Centre, 2011a, pp. 15-16). Numerous cases over the years highlight the way in which the Australian Government had given the impression that Australian forces were not the detaining authority, particularly when things went wrong. The death of Tariq Sabri al Fahdwi, also known as Tanik Mahmud, was an exemplary case.

Torture and Black Sites

In April of 2003, 66 men were detained by Australian Special Air Service (SAS) forces in Iraq. Even though it was Australian forces that detained the men, the ADF asserted publicly that the US was the detaining authority due to the presence of one US military representative who was embedded with the troops. As part of the arrangement, Australian SAS troops transferred custody of the men to the UK. If

operating under the Trilateral Arrangement, Australia would have retained the responsibility to ensure the safe arrival of the detainees to US custody.

It was discovered that Mr Tanik Mahmud, one of the 66 detained men, died whilst on board a UK helicopter on route to a secret US detention centre called H1 in Iraq (Gillespie, 2003). A UK squadron leader later reported that the men were handed over by the Australian SAS forces with their thumbs bound together, and the UK then taped hessian bags over their heads (Cobain, 2012). According to official documents, by the time they flew to the secret US facility, two of the men were unresponsive after being forced to the floor and knelt on, apparently to subdue them during the flight (Cobain, 2012). It was during the flight that the man died. Soon after, a *Guardian* report noted that a complaint had been filed with the RAF police that Mr Mahmud had been kicked and punched, however, the UK and US government refused to provide the full details of his death. An independent autopsy was also refused (Cobain, 2012).

Before the death was made public, Iranian officials contacted the Australian Government to inquire about four of its citizens. Australian officials told them that they were not the detaining authority and that they did not know the whereabouts of these citizens, even though Australian SAS troops had captured them. A Minute authorised by the Chief of the ADF, General Peter Cosgrove, to the Minister for Defence, Robert Hill, noted the concern that any “public disclosure of the death may be damaging to the US and UK governments” (Cosgrove, 2004, p. 2). So the death was kept quiet in order to protect the US and UK governments from any scrutiny.

However, leaks and subsequent reports detail the extent of the cover-up. The Australian Government misled the public in relation to the death and Australia’s involvement in transferring prisoners to black sites. Whilst they publicly stated that they were not the detaining authority, and the ADF was not involved in handing over detainees to secret prisons, documents released under Freedom of Information (FOI) demonstrate this was false. A Task Force Dagger Memo clearly stated that the detainees (including Mr Mahmud) “were handed over to the UK [forces] for transit to an EPW [Enemy Prisoner of War] handling facility at H1” (Gillespie, 2003, p. 1).

The H1 holding facility was a secretive Forward Operating Base of a US Special Forces unit called Task Force-20 (Cobain, 2012). A US report details that whilst the US had tactical control, an Australian SAS unit called Task Force 64, and a British Special Forces brigade called Task Force 14, were an integral part of operations at H1 (Cobain, 2012). A former UK regiment trooper who was based at H1 told a reporter from *The Guardian* that when prisoners were brought to the facility, they were handed over to “other authorities” (Cobain, 2012). Whilst it is unknown who these authorities are, a Human Rights Watch report notes the CIA worked with Task Force 20 in many operations under JSOC, and they have been responsible for “some of the most serious allegations of detainee abuse” (Human Rights Watch, 2006, p. 1).⁵⁶ These include detainees being bruised from head to foot from severe beatings, being held in stress positions and having electrical burns all over their bodies (Human Rights Watch, 2006, p. 6).⁵⁷ Subsequent reports detail the use of waterboarding and other humiliating torture of prisoners under the detention of Task Force 20 – such as a 73 year old woman who was placed in a small room with no food or water, and was later “forced to crawl around on all fours as a “large man rode” on her, calling her an animal (United States Army Criminal Investigation Command, 2004, p. 4). She testified that she was harassed with dogs, touched inappropriately, and had a stick forced in her anus whilst she was on the ground (United States Army Criminal Investigation Command, 2004, p. 5). Posters were apparently placed strategically around the Task Force detention facilities that read “NO BLOOD, NO FOUL”, which reflected their attitude that “if you don’t make them bleed, they can’t prosecute you for it” (Schmitt & Marshall, 2006, p. 2).

Despite Australian Government assurances, the initial investigation into the death undertaken by the UK Royal Air Force (RAF) lacked any credibility. When the US autopsy results were released in 2012, it revealed that the initial RAF investigation was so superficial, that they failed to identify the deceased man correctly; Mr Mahmud’s name was actually Tariq Sabri al Fahdwi, a 36 year old man from Baghdad (Cobain, 2012). In addition, the death certificate appeared to obfuscate where the body of al Fahdwi was buried in what appears to be an attempt to hide

⁵⁶ Task Force 20 has changed its name several times over the years, first to Task Force 6-26, then Task Force 145 (Cobain, 2012).

⁵⁷ According to the Human Rights Watch (2006) report, these instances were recorded at a number of US detention facilities including Camps Nama, Cropper and Bucca (Human Rights Watch, 2006).

their knowledge of the black site, and the Australian Government's knowledge and involvement (Cobain, 2012).

The Australian Government's knowledge of the ghost prison, enforced disappearances, and the involvement of Australian Special Forces in running the H1 facility was nothing short of troubling. Ghost prisons are prohibited under international law in order to ensure that all war-time activities are transparent, and detainees cannot be mistreated. However, it was clear from documents released under FOI that the Australian Government was more concerned with protecting the US from embarrassment than upholding its obligations under international law. This protection of foreign interests in lieu of international law was also linked to the torture and ill-treatment of prisoners at Abu Ghraib.

Abu Ghraib

The point is there's children who no longer have mothers and fathers because they've been killed. If someone's feelings are going to be hurt for [a] short period of time in order to get that information, then personally I think you've got justification – Australian Major George O'Kane (as cited in Department of Defence, 2004c, p. 17).

Photos showing the humiliated men of Abu Ghraib shocked the conscience of many. For the first time, allegations of torture became an undeniable reality that could no longer be shrugged off as fabrications or stories made up by supposed al Qaeda members in order to defame American soldiers, as suggested by some Australian and US politicians. The tortured men suddenly had faces, and the world was provided a glimpse of the atrocities committed by US personnel. There for all to see, were their twisted and contorted bodies smeared with faeces, they were forced to perform sexually explicit acts and to pose naked for the camera. The grotesque posing of US soldiers over dead prisoners was laid bare in all its confronting reality. The impact of the photographs was significant, and over a



Figure 7- Sexual Humiliation, Abu Ghraib (Source: US Military, 2003)

decade after the 2004 release of photos, the Obama Administration fought the release of around 2, 100 additional photographs as they are said to be even more disturbing than the original ones (Walker, 2014).

An Australian Army Major, George O’Kane, was stationed in the US office of the Staff Judge Advocate, at Combined Joint Task Force Seven (CJTF-7), Camp Victory in Baghdad (Public Interest Advocacy Centre, 2011d). Although O’Kane’s superior was a UK Lieutenant General, he worked very closely with the US military as an embedded legal officer. O’Kane had a number of responsibilities, including providing legal advice on proposed interrogation techniques, rules of engagement, and other detention/internment issues as part of the Combined Joint Task Force (Pezzullo, 2004a).

Interrogation

...they exploit the Geneva Convention and take refuge in the civilian population as a non-combatant in order to launch their attacks – well, they don’t get the protections that are in GC III ...and that is specifically in Geneva Convention IV Article V...That’s what it says, they don’t get the privileges – Major George O’Kane (as cited in Department of Defence, 2004c, p. 21).

After a prisoner died in Afghanistan under the ‘care’ of the 205th Military Intelligence Brigade, and while the brigade was under investigation because of the death, the US commanding officer sought legal advice on proposed interrogation techniques so they had “top cover” and legal authority to go ahead with interrogations of so-called high value detainees (Pezzullo, 2004a, p. 29). It was in this context that Major O’Kane was tasked with providing legal advice on whether the interrogation company’s intelligence gathering techniques complied with the GCs (Public Interest Advocacy Centre, 2011c). It would be later discovered that the 205th Military Intelligence Company was at the centre of the infamous abuse and torture photos released from Abu Ghraib.

The techniques proposed included “sleep management, dietary manipulation and, possibly, sensory deprivation”, which were already outlined in the US Army Field Manual (Pezzullo, 2004b, p. 2). Major O’Kane’s advice was that the proposed

interrogation techniques “*substantially* [emphasis added] complied with the Geneva Convention” ([Redacted], 2003, p. 1), however, he failed to provide limitations or adequate detail (Public Interest Advocacy Centre, 2011c). O’Kane noted “An interrogation TTP [Tactics, Techniques and Procedures], like any physical or psychological duress, will eventually amount to inhumane [sic] treatment”, however, no thresholds were discussed, and he took the view that it was up to the interrogator to determine the acceptability of the techniques based on their individual experience and training ([Redacted], 2003, p. 1; Department of Defence, 2004c).⁵⁸ O’Kane also indicated in a subsequent interview that these techniques were appropriate given the situation in Iraq. He stated “interrogation is not for kicks; interrogation is for information to save lives tomorrow or the next day. But that’s the underlying rationale for it is for saving lives that are going to be lost if you don’t get that information” (Department of Defence, 2004b, p. 73).

However, techniques such as sleep and sensory deprivation are generally regarded as breaching protections under the *Convention against Torture* 1984 (CAT) and the GCs. As detailed in the previous chapter, the inevitable consequences of these techniques are horrific. To prevent prisoners from sleeping, guards would kick on their cage doors, play loud music, scream at them, strip them naked and give them cold showers, and leave lights on 24 hours a day (Fay, 2004). Prisoners were chained in uncomfortable positions, left in hot or cold cells, sometimes naked and with no way of regulating temperature, and some were left in total darkness (Fay, 2004). Despite prohibitions under international law, the techniques were used on prisoners after legal advice, provided by Major O’Kane, stated that the interrogation techniques only substantially complied with the GCs (Public Interest Advocacy Centre, 2011c).

It is of note that these interrogation techniques were already in use at Guantanamo Bay under the direction of General Geoffrey Miller, who was sent to Abu Ghraib to ‘Gitmoise’ the prison in September of 2003. Documents detail that Miller was brought to the prison “to show how to run a prison and get more information from detainees” (Pezzullo, 2004b, p. 2). Indeed, in a subsequent interview, O’Kane

⁵⁸ Redacted references refer to documents released under Freedom of Information where a name, or names have been removed by the Department of Defence to protect the author.

acknowledged that the thresholds for interrogation techniques he authorised would be lifted as a result of Miller's involvement (Pezzullo, 2004b, p. 2). Despite this, he failed to raise concerns to his superiors.

In addition to the problematic interrogation techniques, a further troubling aspect was the attitude O'Kane expressed towards prisoners, and the ambivalence as to whether mistreatment of detainees was absolutely prohibited. He stated that the International Committee of the Red Cross (ICRC) "call it ill treatment, but we call it successful interrogation techniques" (Department of Defence, 2004c, p. 15). At one point during an interview with an Australian Investigator, O'Kane called the un-tried prisoners "the most dangerous, violent people in Iraq" and that the interrogators "should be...getting them into a position where...they're persuading them to cooperate" in order to save lives (as cited in Department of Defence, 2004c, p. 15). It appears from the records of interview that this attitude, which regarded all prisoners as hardened terrorists that needed to be treated harshly, permeated the culture of the prison. It is understandable then, to see how the GCs were subverted.

Further, O'Kane's involvement ran a great deal deeper than simply providing legal advice in relation to interrogation techniques. When allegations of torture and other ill-treatment were raised in a report from the ICRC, Major O'Kane's role was to respond on behalf of US Brigadier General Karpinski to the ICRC. Under the GCs, the ICRC's role is to ascertain the conditions of confinement and interrogation ensure that the detaining authorities are complying with the laws of war.⁵⁹

The full contents of the ICRC report that O'Kane responded to have never been released, however, there are some allegations mentioned throughout documents released to the Public Interest Advocacy Centre under the *Freedom of Information Act* 1982 (cth). These included threats during interrogation, insults and verbal violence during transfer in Unit 1A, sleep deprivation (loud music, light on in the cell during night), walking in the corridors handcuffed and naked except for female underwear over the head, and handcuffing either to the upper bed bars or doors of the cell for three to four hours (Pezzullo, 2004a, p. 21). Some detainees presented

⁵⁹ Article 126 of Geneva III states that there is only one exception to this rule; access can be denied on the basis of 'imperative military necessity' and this is only to be used as 'an exceptional and temporary measure'.

physical marks and psychological symptoms, compatible with these allegations. The ICRC delegates witnessed the following:

1. Some detainees presented significant signs of concentration difficulties, memory problems, verbal expression problems, incoherent speech, acute anxiety reactions, abnormal behaviour and suicidal ideas. These symptoms appeared to have been provoked by the interrogation period and methods;
 2. Some detainees were kept in total darkness in their cells;
 3. Some detainees were kept naked in their cells;
 4. Obvious scars around wrists, allegedly caused by very tight handcuffing with 'flexicuffs';
 5. Some detainees wore female underwear;
 6. Some were provided with one jumpsuit and no underwear;
 7. In some cells beds were without mattresses and blankets
- (as cited in Pezzullo, 2004a, p. 21).

Instead of making an attempt to speak with the prisoners and thoroughly investigate the veracity of their allegations, O'Kane only went to the prison to speak with US officials to ask for their assistance in drafting a response to the claims. Major O'Kane not only failed to take the reports seriously, but also failed to independently investigate the allegations that were made. In an interview with Mike Pezzullo, who at the time headed up the Australia's Iraq Detainee Fact Finding Team (IDFFT), Major O'Kane said:

If you've got 5000 or 6000, you know, Saddam Fedayen, former regime elements, Islamic extremists, you know, a couple of terrorists, you know, all thrown in there and then you don't need to read that report to know that they're not going to be complimentary about the treatment, 'cause these people hate the Americans with a passion... and sure some will complain... So, in that context there is – to me it's obvious, but maybe it's not obvious to other people and of course they're going to complain about their treatment to the ICRC (as cited in Department of Defence, 2004b, p. 45).

Unsurprisingly, the final report that O'Kane drafted in response to the ICRC, "glossed over" the treatment of detainees (Fay, 2004). A contributing factor may also

lie in O’Kane’s relationship with a civilian interrogation contractor from the private military company, CACI – Mr Steve Stephanowicz (Smith & Cosgrove, 2004). O’Kane and Stephanowicz met during the transfer of a so-called ‘high-value detainee’ in December 2003 to Abu Ghraib (Department of Defence, 2004a). Following that initial interaction, in which they discussed a mutual acquaintance in Australia, the two men were involved socially (Department of Defence, 2004a). Stephanowicz was deeply involved in the ill-treatment of prisoners at Abu Ghraib given his role as a civilian interrogator. The Taguba report (2004) found that Stephanowicz had instructed MPs to set conditions for interrogations that were not authorised, and that these instructions equated to physical abuse. Indeed, the report later noted that Stephanowicz made false statements to the investigation team regarding the location of his interrogations, the activities he employed during his interrogations and his knowledge of the abuses (Taguba, 2004). Despite this, O’Kane and Stephanowicz shared a friendship that included having photos taken at the prison on several occasions, and email contact when the two were back in Australia. This raises a number of questions as to the extent of O’Kane’s knowledge of the torture that was taking place at the hands of interrogators, and indeed his independence in reporting abuses, given the relationship between the two men.

O’Kane’s involvement in dubious activity extended to hiding prisoners from the ICRC, which is strictly prohibited under international law. Whilst O’Kane was based at Camp Victory, he was instructed to prevent the ICRC from visiting nine prisoners from cell-block 1A, because they were under “active interrogation” (Department of Defence, 2004b, p. 57). In a subsequent statement, O’Kane said “if you break someone down, or persuade them to give up information you don’t need them drawing strength from an ICRC visit” (as cited in Public Interest Advocacy Centre, 2011b, p. 7). The ICRC visits were regarded as an inconvenience and described as a “necessary evil” by O’Kane, (as cited in Department of Defence, 2004b).

As a result of an interview between O’Kane and Brigadier Steve Meekin from the Defence Intelligence Organisation, it was also revealed that O’Kane became aware that the US was secretly detaining a man called Hiwa Abdul Rahmna Rashul, known to them as ‘Detainee Triple X’ (Smith & Cosgrove, 2004, p. 1). Notwithstanding

previous interviews, O’Kane had never mentioned Rashul when discussing the Fragmentary Order⁶⁰ to prevent ICRC access to the prison.

Rashul was detained in Iraq and rendered to Afghanistan for ‘interrogation’ by the CIA as a so-called high value detainee. In 2003, O’Kane was shown a classified order provided by then US Commander in Iraq, Lieutenant General Ricardo Sanchez. The order detailed that ‘Detainee Triple X’ was not to be placed on a roster of detainee names and that he was not to be registered with the ICRC (Public Interest Advocacy Centre, 2011b). O’Kane states that he reported this to US superior Colonel Marc Warren, not because he was concerned about the breaches of international law, but because he feared that if this became public, it would embarrass the US Government (Smith & Cosgrove, 2004, p. 2). O’Kane also reported it to his Australian superior, a Lieutenant Colonel who was an intelligence officer. Regardless of these concerns, Australian officials failed to raise the issue of unlawful detention, treatment and breaches of international law with the US Government rather, Australia only raised ‘attention’ to the issue of Rashul’s detention (Public Interest Advocacy Centre, 2011b, p. 12).

The Australian Government Response

Even in the face of the significant involvement of O’Kane in the Abu Ghraib saga, a thorough and independent investigation has never been undertaken, and no one has been held to account. Although an Iraq Detainee Fact-Finding Team (IDFFT) Report was ordered by General Cosgrove, it was weeks after the Australian Government knew the treatment of detainees had become an issue (Public Interest Advocacy Centre, 2011d). In addition, whilst giving the appearance of accountability, the IDFFT was not tasked with making findings or recommendations, thereby ensuring that it would not result in any significant outcome (Public Interest Advocacy Centre, 2011d).

The investigation process itself was also marred with incompetence. The interview transcripts between O’Kane and Mike Pezzullo, who headed up the IDFFT, demonstrate the gravity of the situation was not taken seriously considering that they

⁶⁰ A fragmentary order is an abbreviated form of an operation order, such as a Standard Operating Procedure, and is usually issued on a daily basis.

“joked with him, asked leading questions, and omitted significant questions such as when did Major O’Kane first become aware of *investigations* of abuse?”, rather than *allegations* of abuse [emphasis added] (Public Interest Advocacy Centre, 2011d, pp. 16-17). The general attitude towards the investigation was also lacking in professionalism. For example, when Mr Pezzullo was referring to the ICRC allegations of abuse, he made the comment “Some detainees were kept in total darkness – well I’m not scared of the dark” (as cited in Department of Defence, 2004c, p. 13). At its conclusion, the IDFFT was only provided nine days to draft its report, and there were some errors in the data presented to the Senate Estimates Committee (Public Interest Advocacy Centre, 2011d). It appears that the investigation was more of a face-saving exercise, rather than actually intending to hold anyone to account.

Indeed, it is clear from released documents that the Howard Government actively sought to avoid having to investigate any allegations of mistreatment by US-led forces in Iraq. Email correspondence within the Department of Foreign Affairs and Trade (DFAT) demonstrates this avoidance:

The correspondent quotes Mr Downer [then Minister for Foreign Affairs] as saying in recent DFAT/NGO consultations on human rights that DFAT “would be willing to follow through on particular cases of alleged human rights abuses carried out by US-led forces in Iraq to establish that these are properly investigated and appropriate action taken. *We will need to get around this somehow* [emphasis added] ([Redacted], 2005, p. 1).

In other words, although members of the Australian Government were providing assurances to the public that any allegations of mistreatment would be investigated, it was clear that behind the scenes, everything was being done to ensure this did not occur. For example, in a Senate Committee Hearing in 2004, the Howard Government relied on the reports from O’Kane that prisoners were being held in conditions that complied with the GCs, and chose to ignore other members of the ADF who had raised concerns (Senate Foreign Affairs, Defence and Trade Legislation Committee (Shane Carmody, Department of Defence), 2004). Therefore, as the public record stands, the Australian Government position is that US interrogation techniques used in Abu Ghraib complied with the GCs (Evidence to

Senate Foreign Affairs (Simon Harvey, Air Commodore), 2004). Nothing was ever corrected or clarified by the Australian Government, and the advice was never publicly released. Former Defence Minister Robert Hill was later forced to admit that whilst O’Kane’s situation reports did not raise issues of abuse, it was clear that this was inaccurate (Parliament of the Commonwealth of Australia, 2004a, p. 84).

O’Kane was also completely shielded from an independent investigation. The Howard Government went as far as protecting him from testifying before an Australian Senate Committee (Public Interest Advocacy Centre, 2011d). The excuse given at the time was that it was “not usual practice”, and that he was only a “junior Officer” (Parliament of the Commonwealth of Australia, 2004b, pp. 25-29). In addition, O’Kane was protected from appearing before the US investigation into Abu Ghraib ‘abuses’ led by US Major General Fay. The Australian Government only provided written responses to the allegations, and these were provided too late for them to be included in the report (Fay, 2004, p. 67).

Obtaining complete, un-redacted reports and documents is still an issue, and has been marred with ongoing secrecy and silence. Consequently, the information documented above in relation to Abu Ghraib forms only the tip of the iceberg considering the amount of material that has been classified as material exempt from release on national security grounds, or due to a supposed threat to international relations. This move towards further secrecy permeates the War on Terror, some term it the shadow war.

The Dark Matter: SAS, 4 Squadron, JSOC and the New Shadow War

We’re the dark matter. We’re the force that orders the universe but can’t be seen – Anonymous Navy SEAL & JSOC member (as cited in Priest & Arkin, 2011b, p. 1).

Under the leadership of former chief of the US Special Operations Command (USSOCOM) Admiral William McRaven, the Joint Special Operations Command (JSOC) expanded its global reach. With a boost in funding from US\$2.3 billion in 2003 to \$10.4 billion in 2013, covert US special operations are now the preferred

method of warfare. Part of this strategy was the delegation of Special Operations Command "liaison officers" to ten embassies world-wide, including Australia (Andrew Davies, Jennings, & Schreer, 2014). According to McRaven, the purpose was to "to advise indigenous Special Forces and coordinate activities with those troops" (McRaven, 2013, p. 6; Schmitt & Shanker, 2013). This strategic move on the part of the US has led to an expansion of Australia's covert military, security and intelligence operations and increased SAS-JSOC cooperation.

Whilst Australia has always taken part in covert military operations with the US, the events of September 11 were the catalyst for even deeper involvement. This has extended not only in relation to information sharing within the intelligence community, but also in joint military activities, particularly in relation to Special Forces (SF) troops. To coordinate efforts in the War on Terror, Australia's Special Operations Command (SOCOM) was established by the Howard Government in 2003. It is from here that many of Australia's SF operations are headquartered.

Since the Iraq war, Australia's private security industry has boomed, and security companies play a quietly influential role, particularly in Iraq (Brown, 2014). One of the biggest industries has been the guarding of Australian diplomats either visiting overseas, or stationed at embassies. Whilst the US State Department's Bureau of Diplomatic Security takes care of US diplomats, Australia does not have an in-house service, so DFAT contracts out to UK based Hart Security (Brown, 2014). In Afghanistan, the mega company G4S, made up of former UK SAS forces, guards Australian Federal Police compounds. The reason for this expansion again rests with the risks (and headaches) involved in having armed personnel having to engage in these situations. The Australian Government, like the US, would rather contract out the problems to less visible armed soldiers in order to avoid any messy political situation that would occur if, for example, an Australian military member was involved in torture or deaths of civilians. When a contractor is killed in Iraq or Afghanistan, there is no military funeral and no publicity to cause political embarrassment (Brown, 2014).⁶¹ In direct response to the issues detailed earlier in Iraq in relation to Blackwater and other US contractors, those PMSCs guarding

⁶¹ According to Brown (2014), five Australian security contractors have died since 2003, and whilst the Australian government does not track civilian casualties, US figures demonstrate that around 40 Australian contractors have been injured in Iraq and Afghanistan.

Australians in Afghanistan have official diplomatic passports and are afforded the same protections as a diplomat, including security clearances that give them access to intelligence briefings (Brown, 2014). In Baghdad, Iraq, the Australian PMSC Unity Resources guards the Australian embassy for a \$77 million contract. Like the US, most Australian PMSC are former Special Forces.

One of the greatest problems to occur in relation to torture, ill-treatment, and a lack of accountability has been the apparent amalgamation of practices between US forces and Australia's SAS. More regular joint training exercises and operations have resulted in interrogation techniques and other detention operations being dominated by US directed practices, and these have encroached on traditional roles and practices of the ADF. Joint exercises are now held regularly, including twice yearly exercises with US Sea Air and Land (SEAL) teams that include Arctic missions, where commandos parachute from aircraft, and swim into nuclear subs beneath the ice (McPhedran, 2011). A 2012-13 Defence Annual Report notes that Australian SAS forces held a joint patrol exercise with JSOC Combat Operations Group in December 2012 under the title of Night Eagle (Department of Defence, 2013, p. 7). Whilst nothing is known about the details of training JSOC and other US contractors provide to Australian forces in relation to interrogation techniques, allegations of abuse at the hands of Australia's SAS forces appear to demonstrate the level of interoperability, particularly in light of their involvement in the black site H1 as described earlier.

Australia's Special Air Service

Australia's SAS forces have been described as some of the most highly trained soldiers in the world (Macklin, 2014). Reminiscent of SERE training for US Special Forces, part of the SAS training includes what has been termed "hell week", where they are subjected to sleep deprivation, starved and soaked with water for twenty three hours a day (McPhedran, 2011). This kind of training is known to have deleterious impact on the psychological health of soldiers, and it also impacts on the way they are trained to respond to those detained in the theatre of war. Most SAS missions are conducted in secret, and involve reconnaissance and other military/intelligence operations (Macklin, 2014). However, with secrecy comes a lack of accountability.

It is in the public realm that Australia's SAS forces were on the ground in Afghanistan shortly after September 11, and they fought together with the US SEALs at the battle of Anaconda in Afghanistan (McPhedran, 2011). Capture/kill missions such as these formed an integral role in relation to Australia's involvement with US SEALs in Afghanistan and Iraq as part of JSOC operations. It was not until 2013, however, that whistleblowers from within the ADF contacted reporters as a result of their concern about the actions of the SAS, including their role in carrying out capture/kill missions in Afghanistan and involvement in torture and ill-treatment (Wroe & Snow, 2013).

In the event of capture, detainees were brought to the Initial Screening Area in the international Tarin Kowt base. It is here that allegations of 'mistreatment' surfaced, including the death of a man cruelly dubbed "Abdul Kaput", who was allegedly handed over to US interrogators for about two hours, died, and his corpse was placed in a taxi and driven out of the base because no one wanted to take responsibility for his death (Wroe & Snow, 2013, p. 1).

Other detainees were reportedly brought to the base by Australian SAS forces with visible injuries, including bloody noses and mouths, and bruises to the face (Wroe & Snow, 2013). Sources from within the base also alleged that they were pressured to "condition" prisoners for interrogation by "gagging them, keeping them awake, denying them exercise and disorienting them through sensory deprivation" (as cited in Wroe & Snow, 2013, p. 2). A whistleblower stated Special Operations Task Group (SOTG) "and intelligence pressured us to gag and hood the detainees...the [ISA] CO fought that hand over foot, saying if we gag and hood these guys, someone will die" (as cited in Wroe & Snow, 2013, p. 2). These interrogation techniques are reminiscent of those used by US interrogators in Guantanamo Bay, Abu Ghraib and elsewhere in the War on Terror.

In addition, the SAS handed over prisoners to forces known to engage in torture (Wroe & Snow, 2013). The Provincial Response Company was under the control of an Oruzgan police commander, Matiullah Kahn, a warlord well known for his treatment of captives. When the Provincial Response Company turned up in the Australian base to detain some Afghan prisoners, one whistleblower stated "these guys just got the look of death in their eyes. They were shitting themselves" (as cited

in Wroe & Snow, 2013). The UN Assistance Mission in Afghanistan released a report in 2011 documenting the wide-scale torture of prisoners across Afghanistan, including women and children (United Nations Assistance Mission in Afghanistan, 2011). Observers found “a compelling pattern and practice of systematic torture and ill-treatment at a number of NDS [National Directorate of Security] and ANP [Afghan National Police] detention facilities” (United Nations Assistance Mission in Afghanistan, 2011, p. 49). The documented methods of torture included electric shocks, methods of suspension, beatings to the soles of feet with electric wires, rubber hoses and sticks, twisting genitals, stress positions, removal of toenails, and sexual abuse (United Nations Assistance Mission in Afghanistan, 2011, p. 49). Whilst Australian reports stated that no prisoners had been transferred to detention facilities suspected of abuse, the issue of who was classified as the Detaining Authority again came to the fore due to the fact that the presence of personnel from Afghan police units on joint operations meant that the detainees were designated under Afghan control.

The case of a juvenile who arrived at the international Tarin Kwot base looking for his father further contradicted claims by the Australian Government that Australian forces had not been involved in transferring prisoners to torture. The teenager was the son of the man labeled “Abdul Kaput” who was killed and driven out of the base in a taxi. Whilst the Australian Government stated that the juvenile was not mistreated or transferred to US custody, whistleblowers have confirmed that the boy was handed over to US custody (Snow & Wroe, 2013). The whistleblower said “it was clear as anything in the ‘prisoner under capture’ book...he was handed over to the US for interrogation...the flight sergeant [who detained the boy] told me they’d given him to the Americans” (as cited in Snow & Wroe, 2013, p. 2). Afterwards, he was apparently escorted off the base by RAAF security police.

There were also investigations into Australian SF killing civilians and labeling them insurgents in Afghanistan. A 2013 report, noted a case where Australian SF were conducting a joint operation with the Afghan police where a civilian man and his child nephew were killed (Blenkin, 2013; Snow & Wroe, 2013). The joint Australian Special Operations Task Group wrongly labeled the man as an insurgent, and his nephew was found tucked and huddled next to the man. The final report noted that

Australian forces lacked rigor in their identification process (Wroe & Snow, 2013). Other unexplained civilian deaths have also been reported in Afghanistan, one 2006 incident left a woman blind and another seriously injured (Wroe & Callinan, 2016).

Disturbingly, there have also been cases where Australian SF have been linked to mutilations. For example, in April 2013, SAS soldiers cut off the hands off dead bodies in Afghanistan, reportedly for identification purposes (Wroe & Callinan, 2016). These, and other unreported incidents, have prompted the Chief of Army, Lieutenant-General Angus Campbell, to announce a review of special operations by the Inspector General of the ADF in 2016 (Wroe & Callinan, 2016).

4 Squadron

There is another aspect to Australia's involvement in the War on Terror that has left many international law and human rights experts even more concerned; that is the creation of clandestine military/intelligence organisations that lack oversight, and that are deploying to parts of the world where Australia is not currently engaged in war, such as the Horn of Africa (CIA News, 2013; Welch & Epstein, 2012).

In 2005, a special branch of the SAS called 4 Squadron was reportedly created by the Howard Government (Welch & Epstein, 2012). 4 Squadron is said to be based on the role and operations of JSOC, and has purportedly worked alongside them as an equivalent operation. Like JSOC, 4 Squadron has a joint military and intelligence role, which was authorised in late 2010 by former Defence Minister Stephen Smith (Welch & Epstein, 2012).⁶²

FOI documents reveal the establishment of the Joint Interagency Liaison Office (JIALO) in Canberra in 2009, the purpose of which is to “facilitate interaction between SOCOMD [Special Operations Command] and specific Other Government Departments and Agencies to enhance the effectiveness of SOCAUST's contribution to the whole-of government response to domestic security operations, particularly counter-terrorism” (Redacted, 2009, p. 1). The adjusted function for JIALO also reflects the Army's growing focus on interagency operations” (Redacted, 2009, p. 1). Consequently, it appears JIALO was created to coordinate the joint US-Australian

⁶² Although the involvement of Task Force 64 suggests that they may have already been involved in these activities previously.

activities of 4 Squadron and JSOC. Whilst their specific training is unknown, it has been reported that they have been training in long-range intelligence gathering with ASIS on Swan Island, a counter-terrorism training facility located off the coast of Victoria (Welch & Epstein, 2012).⁶³

Although most of the activities of 4 Squadron are secret, reports have indicated that they have engaged in joint missions with JSOC and CIA operations in Iraq and Afghanistan (Welch & Epstein, 2012). Like JSOC, members of 4 Squadron do not wear combat uniforms. Fairfax reports that since 2012, 4 Squadron has been operating in Kenya, Nigeria and Zimbabwe, without the presence of ASIS and in countries where Australia is not at war (CIA News, 2013; Welch & Epstein, 2012). These countries have also been the target of JSOC operations (Scahill, 2013). For example, there is evidence that suggests JSOC provided arms to local warlords in order for them to kill those on a secret kill-list in Somalia (Scahill, 2013). As previously explored, whilst JSOC once solely operated on targeting those on President Obama's kill-lists, now the program has expanded to sanction the killing of anyone in a 'targeted area', or a male of fighting age (under 70 years old) (Scahill, 2007). This has played out in drone strikes killing thousands of people, including the 16 year old child of American citizen Anwar al-Awlaki and the killing of Australian citizens.

This raises a number of issues not only in relation to 4 Squadron's activities on the ground, but their murky status under international law considering that Australia is not currently at war with any of these countries. For example, if a member of 4 Squadron was caught in one of these countries undertaking surveillance operations, they could be prosecuted under domestic legislation covering espionage, which in some cases, can enact the death penalty (Welch & Epstein, 2012). In addition, the secretive nature of the group means that their activities lack oversight. This means that, as in the case of JSOC operations in Iraq, they are operating with impunity. The fact that the public is being kept in the dark about what is being done in these African nations, and there is no trace of evidence about their on-the-ground

⁶³ After a botched counter-terrorism training operation at the Sheraton Hotel in 1983, ASIS had their weapons removed from them by the Hawke Labor Government. The Howard Government returned their weapons in 2003 as part of the expanded role of counter-terrorism activities in Australia.

operations, is encroaching on dangerous territory. In effect, 4 Squadron is acting as secret police would.

If the Australian equivalent is based on JSOC, ascertaining whether members of 4 Squadron have been provided the same training, and the extent of their involvement in JSOC activities are legitimate and pressing concerns, especially since there have already been reports that some SAS regiments have allegedly been involved in the mistreatment, torture and mutilation of prisoners, and capture/kill missions in Afghanistan. Indeed, it is of grave concern that the recent passing of the National Security Legislation includes provisions for criminal immunity for intelligence organisations and “affiliates” (Parliament of the Commonwealth of Australia, 2014b).

However, obtaining any formal information about JSOC and 4 Squadron has proven to be difficult. An FOI request I submitted in 2014 was denied on the grounds that confirming or denying the existence of documents “would cause damage similar to disclosing the document itself” (Davidson, 2014). When the request was filed, separate FOI documents revealed that meetings were called within Joint Operations Headquarters, and concerns were raised about the filing of the request by an individual “without clearance”. The matter is now being heard at the Administrative Appeals Tribunal.

Besides the serious lack of transparency and independent oversight, the more concerning aspect was the person responsible for denying the request. As discussed, since his time in Iraq, Lt. Col. O’Kane, who was involved in the Abu Ghraib torture scandal, was promoted, and is now the Chief Legal Officer for the Office of the Chief of Army. O’Kane was responsible for denying the request into 4 Squadron.

This situation raises significant questions about the evolving nature of secretive operations, unchecked powers, and the blurred lines between the military, intelligence and executive branches. Australian officials are so deeply embedded with the US military and their foreign policy interests, it is easy to see how the role of representing the Australian people and the national interest can be subverted.

In a 2014 Senate Estimates Hearing, Greens Senator Scott Ludlam asked about the existence of 4 Squadron after four peace activists were detained on Swan Island

during a peaceful protest against the Iraq war. Senator Ludlam was met with disdain from defence personnel, who refused to answer questions put to them about whether 4 Squadron exists, despite the fact that the Senator did not ask about operational matters which would clearly encroach on national security issues (Parliament of the Commonwealth of Australia, 2014a). Senator Ludlam stated that it was hard to see why the Australian parliament is not even allowed to know whether the Squadron exists (Parliament of the Commonwealth of Australia, 2014a).

It is unknown if the military personnel who detained the peace activists were from 4 Squadron, however, their treatment clearly constituted a breach of human rights protections against cruel, inhuman and degrading treatment. All four of the activists were reportedly hooded and violently tied with flexi-cuffs, the same techniques that are regularly employed in theatres of war. One of the activists, Greg Rolles, recounts that the person who detained him shouted “welcome to the bag mother-fuckers” when he had a hessian bag placed over his head (Rolles, 2014, p. 2). He also described having his pants pulled down, and was threatened to be raped with a stick if he did not provide the information asked of the military personnel member (Rolles, 2014). All of the protestors describe being hit, kicked and having their arms twisted in unnatural positions that caused significant pain. The Australian Department of Defence conducted an ‘internal investigation’ into the incident, however, the final report was heavily redacted and did not include the protestor’s testimony (Kelly, 2015; Parliament of the Commonwealth of Australia, 2014a). The report, prepared by Lt-Col. M. A. Kelly, noted that the protesters “did not suffer any indignity” from having their pants removed, and the actions of the soldiers were “reasonable”, and that there was just a “perception” from protestors that the soldiers were “heavy handed” (Kelly, 2015, p. 52 & 55).⁶⁴ Predictably, the conclusion of the report stated that “allegations of mistreatment made by the arrested persons are not able to be substantiated” (Kelly, 2015, p. 61).

⁶⁴ There was more in the report about protecting the ADF from adverse publicity, and amending training for future defence personnel so they are aware of their ability to make a citizen’s arrest (Kelly, 2015).

Australia's role in the cover up of US torture, CIA Extraordinary Rendition and unlawful detention of Australian Citizens

The Australian Government played a direct role in the overseas detention and torture of three Australian citizens during this period; Mamdouh Habib, David Hicks and Joseph Thomas. According to their own testimony, and that of other eyewitnesses and experts, all three men were subjected to conditions and treatment that amount to torture. The story of Mamdouh Habib and David Hicks gained substantial notoriety in the years after 2001 because they were both held at Guantanamo Bay. Although copious amounts of evidence has established that conditions and treatment amounting to torture were common place in Guantanamo Bay, the Australian Government refuses to independently investigate what happened to the two men whilst detained by US forces, and whether Australian officials knew of their torture and ill-treatment. The Australian Government went as far as to say that torture did not occur in US facilities, even though evidence to the contrary is substantial and admitted by US officials themselves. The same situation has occurred in the case of Joseph Thomas, even though he was held in black-sites. This section provides a background to their detention and torture to serve as background for the results covered in Chapter Five.

Mamdouh Habib

Mamdouh Habib is an Egyptian-born Australian national who was subjected to extraordinary rendition. Mamdouh was initially detained in Pakistan in October 2001 and subsequently handed over to US forces who rendered him to Egypt (Open Society Justice Initiative, 2013). It has been demonstrated that Australian officials interrogated Mamdouh whilst in US custody, and it has been further alleged that Australian officials were present when he was being tortured in Egypt. An Egyptian intelligence officer claimed that an Australian official named 'George' was present for a medical check performed whilst Mamdouh was naked and shackled (Open Society Justice Initiative, 2013). Mamdouh was eventually transferred to Guantanamo Bay. Whilst in Egypt and subsequently Guantanamo Bay, Mamdouh

states he was subjected to horrific physical and psychological torture including; being beaten, electro shocked and hung from metal hooks in walls, mock executions, stress positions and subjected to forced medication (Habib & Collingwood, 2008). Whilst detained in Guantanamo, Mamdouh was subjected to treatment that also amounted to torture, including sleep deprivation, environmental manipulation, sensory deprivation and isolation (Habib & Collingwood, 2008).

Mamdouh Habib was released from Guantanamo in 2005, after pressure had mounted on the Australian Government due to his rendition. It is believed that this is why Mamdouh was released, and the other Australian, David Hicks was left in Guantanamo.

Mamdouh Habib reached an out-of-court settlement with the Australian Government in December of 2010 after alleged proof of an Australian officer's presence in Egypt was provided to the Australian Government, and an investigation into Australia's involvement in his torture in Egypt was conducted. The full classified report was never released to the Australian public, although the unclassified version concluded that Australian officials had no involvement or knowledge of Mamdouh's treatment in Pakistan or Egypt (Thom, 2011). Remarkably, the report did not address Mamdouh's treatment in Guantanamo Bay, or at the hands of US agents and military. However, he is the only Australian citizen to have some form of an 'investigation' into his case, and be compensated for the torture that occurred whilst he was detained.

David Hicks

David Hicks was sold by the Northern Alliance to the US military in Afghanistan for around US\$5,000. Whilst in US custody, David Hicks was beaten severely during transit to Guantanamo, and then subjected to conditions that included sleep and sensory deprivation, sensory bombardment, isolation, stress positions, mock executions, temperature extremes, medical experimentation as well as other psychological torture techniques. David first saw Australian officials when he was detained on the USS Pelelieu in 2001.⁶⁵ During a recorded interview, that has still

⁶⁵ This was publicly confirmed by Australian government officials

not been released publicly, David states that he told Australian officials of the mistreatment he endured at the hands of the US military, civilian contractors and the CIA (Hicks, 2010). Over the five and a half years of his detention in Guantanamo, members of the Australian Federal Police (AFP), Australian Security and Intelligence Organisation (ASIO), and Australian consular officials, including Mr Tucker and Mr McNulty, interviewed David, and were provided detailed information about how he was being treated (Hicks, 2010). Instead of thoroughly and independently investigating this treatment, the Howard Government relied on two investigations conducted in 2004, after the Abu Ghraib scandal broke. These two investigations (not publicly released) were conducted by the Naval Criminal Investigative Service (NCIS), on order from Paul Wolfowitz and the US Department of Defense. Whilst the report summary concluded that there was evidence that David was 'roughed up', the body of the report contained statements from witnesses corroborating his torture testimony. The NCIS (2006) report pointed to a cover-up where it also noted that 'men in suits' had removed his medical records from the ships where he was detained en-route to Guantanamo. Publicly, the Australian Government not only discredited any allegations David made, but also protected the Bush Administration from any independent scrutiny. Prime Minister Howard stated that he could bring David back to Australia whenever he wanted to, but refused to do so because investigations into David's conduct revealed that no crime had been committed, and so there was nothing that he could be charged with in Australia (Leopold, 2011).

After years of delays, David Hicks (2010) stated that he was forced to choose between freedom or indefinite detention in Guantanamo Bay. In 2007, testimony to the Federal Court stated that he signed a plea deal in Guantanamo under duress (Hicks, 2007). David pleaded Alford for the charge, Material Support for Terrorism, a crime unknown to international law (Nicholson et al., 2007). The Alford plea meant that he could plead guilty without admitting to any of the alleged evidence presented by the Prosecution.

The *Military Commissions Act* 2006 (USA), under which he was convicted, was replaced, because, as President Obama noted, it "failed to establish a legitimate legal framework" (Obama, 2009, p. 1). Anecdotal evidence suggests that the US offered to

repatriate David, however, the Howard Government was pushing for him to be charged with something (O'Brien, 2011), and they thought a plea deal would be a “win/win” situation (MacDonald, 2007, p. 1).⁶⁶ Documents released under FOI demonstrate the significant pressure that the Howard Government put on the US Government to charge David by mid-February of 2007 before calling the federal election, because the case had become a political liability (Owens, 2007, pp. 1-2). An additional element of the plea deal was a clause in which he had to agree that he was not treated illegally whilst in US custody, and a one year gag order was imposed. David was also placed on a Control Order upon his release from Guantanamo, a move that he was told he could not appeal (Hicks, 2010). A court of Military Commissions appeal vacated David Hicks’ conviction on 19 January 2015. An independent investigation has never been carried out into David’s treatment whilst in US custody, and he is yet to be compensated for his torture and ill-treatment.

Joseph Thomas

Joseph Thomas was another Australian caught up in the events of the War on Terror when he was arrested in Pakistan, as all foreigners were, after 9/11. Joseph was disappeared for the first two weeks, then flown to a military bunker and subsequently driven to Karachi. Joseph was held in various locations and black-sites in Pakistan and interrogated by Pakistani, US and Australian officials over a period of approximately four months.

During his detention, Joseph was subjected to isolation, placed in what he described as a dog kennel about the size of a toilet, was left without food, subjected to suffocation and strangulation during interrogation (his hood was twisted so he could not breathe), threats of electrocution, and threatened that if he did not cooperate that he would be sent to Guantanamo and subjected to indefinite detention (Maxwell, Buchanan, & Vincent, 2006). Joseph’s interrogations by Pakistani officials and the CIA included mock executions and threats to rape family members (personal communication, 28 November, 2014). Joseph recalled that the Americans would also stand and watch whilst the Pakistani officials would humiliate him and verbally abuse him (personal communication, 28 November, 2014). He made a number of

⁶⁶ Documents I requested from the Department of Prime Minister and Cabinet under FOI pertaining to the offer of repatriation have been blocked for years.

“confessions” during this period. He stated “You say anything when you’re being tortured. I would tell them my mother was al-Qaeda if it would make the pain stop” (personal communication, 28 November, 2014).

The conditions in the black-sites were “horrible” and “soul-destroying”, and he still cries when describing them. Joseph described that he was provided with a bucket for human waste that was infested with flies and other bugs. He described the welts from the insect bites from the uncovered buckets filled with faeces as one of the worst things, apart from the “horrific smell” (personal communication, 28 November, 2014). He said that one of the worst parts of his imprisonment in the CIA black-site was being completely reliant on his torturers for his daily needs. After months of being kept away from natural light, and any form of nature, he became so distressed, he asked for a plant in his cell. Joseph also described the CIA threatening to torture him with what they called “a new chair”, in which they would tie him up, and place his testicles in a vice so that he could “hear them pop” (personal communication, 28 November, 2014).

Whilst he was detained in Pakistan, Joseph told Australian officials (ASIO) that he had been suffocated by having his hood twisted from the side, and was shackled “like an animal” to the floor with a three piece suit (personal communication, 28 November, 2014). Disturbingly, Joseph says he was told by ASIO officials that they could not control what other detaining authorities did (personal communication, 28 November, 2014).

After a political battle ensued back in Australia, Joseph was repatriated in June 2003. A year after his return to Australia, and after he had gone back to normal family life, albeit with psychological scars from his torture, the Australian Government attempted to use his ‘confessions’ obtained under torture in an Australian court. His conviction for terrorism related offences was later quashed (Maxwell et al., 2006).⁶⁷ The Court determined:

⁶⁷ Joseph was convicted of passport fraud after he removed the Taliban visa from his passport because the Government had fallen after 9/11. Joseph has stated that he had no choice if he was to get home to his family, as the Pakistan military was surrounding the Australian embassy, and he could not access the building without risking detention and torture.

where a person has been subjected to interrogation over an extended period in a foreign country by foreign intelligence agents who are not averse to 'torture' or threats of torture in order to extract 'intelligence information', it is almost inevitable that any 'evidence' subsequently obtained in a police record of interview, whilst the person is still under the control of these foreign intelligence agents, will be contaminated by the coercive process applied by those agencies. As a consequence the evidence will be inadmissible in a court of law in this country (Maxwell et al., 2006, p. 5).

To add insult to injury, and in a highly politicised move, after his conviction was quashed, Joseph was the first Australian to be placed on a Control Order which included daily check-ins to police stations, limited use of telephones and the internet as well as restricted movement. The move exacerbated his PTSD as a result of his torture and life was never the same again for Joseph.

No investigation has ever been ordered into Joseph's torture and ill-treatment overseas, and there certainly has never been an investigation into the Australian Government's knowledge or involvement of his treatment. Not one US, Pakistani or Australian official has ever been questioned or called to account for the crimes committed against him.

Australia's Counter-Terrorism Legislation

Another aspect of Australia's involvement in the War on Terror, has been the use of the supposed terrorist threat to pass draconian terrorism legislation. Human Rights advocates note that the former US and Australian Government's used the attacks in the US to shred already existing human rights protections (Burnside, 2007). The view that human rights need to be set aside to combat a 'new' threat of terror became the calling card for the governments of John Howard in Australia, George W Bush in the United States and Tony Blair in the UK. The manifestation of this was a long line of anti-terror legislation that was passed hastily in early 2002, and without much

reflection on necessity or proportionality (Walker, 2011). Australia has passed harsher Counter Terrorism (CT) laws than most other Western countries.⁶⁸

The putative emergency has lasted longer than either of the two World Wars, and both combined. No legislation can be regarded as permanent. But the CT Laws in substance if not in form ought to be seen as a regime of intended indefinite duration (Walker, 2011, p. 6).

Australia's extraordinary CT laws have been criticised as unnecessary, stifling human rights and civil liberties, and placing a special status on acts that were already covered in existing criminal laws. The current CT laws provide for 'exalted status' for those who commit terrorist related crimes, and Walker (2011) suggests that this is a dangerous way to view any criminal activity, which is in fact ordinary. Existing legislation has long covered the destruction of property, murder or other violence that would encompass terrorist activity. However, after 9/11, the narrative was so fear-driven and pervasive that the Australian Government decided to expand the legislation to cover these so-called 'special crimes', and in the process provided security and intelligence organisations expanded surveillance powers and the ability to detain without charge. In reality, more people die in car accidents, from domestic murders and bee stings in Australia than terrorist attacks. However, the resources provided to prevent domestic murder, car accidents and bee stings are proportionately miniscule compared with the mammoth resources given to CT (Walker, 2011). One could hardly imagine a war on bees occurring any time soon, and therefore, it can be concluded, that the CT laws have been largely politically driven, rather than as a result of the need for legislation against new criminal acts.

The political nature of the laws is reinforced by the concurrent boost in the polls for elected leaders when they capitalise on national security issues. In 2011, the Labor Government installed an Independent National Security Legislation Monitor (ISLM), Bret Walker QC, in order to review the effectiveness and implications of Australia's counter terrorism and national security legislation (Walker, 2011). However, the Abbott Government placed a number of oversight agencies like Walker's in jeopardy

⁶⁸ In 2015, a siege took place at the Lindt Café in Sydney. Some media reports have described this siege as a terrorist attack; others noted that the perpetrator was suffering from mental illness and had a long line of violent convictions, and questioned the terrorist label.

in what it said were cost cutting measures (Maley, 2014).⁶⁹ Despite the three years of reporting, Walker suggests that the government failed to respond to the concerns raised in the reports, and the issues raised at the Council Of Australian Governments' (COAG) Review of Counter-Terrorism Legislation which took place in 2013 (Walker, 2014). In his final report, Walker notes "When there is no apparent response to recommendations that would increase powers and authority to counter terrorism, some scepticism may start to take root about the political imperative to have the most effective and appropriate counter terrorism laws" (Walker, 2014, p. 2). This failure to respond continued until the Abbott Government was at an all-time low in the opinion polls and subsequently a 'terrorist threat' again became a political issue due to the rise of ISIS in Iraq. During mid-2014, the Abbott Government sought mass expansion of the legislation. The legislation is explored below.

The 2002 Legislation

Much of the CT legislation is quite complex, is broad in scope, and includes many details that are concerning to human rights advocates. The initial amendments were under Divisions 101, 102 and 103 of Part 5.3 of the *Criminal Code* 1995 (cth) which concerned conduct relating to committing and/or planning a terrorist act/s (Burton et al., 2013; Lynch & Williams, 2006). Some of the most controversial and draconian powers, however, were those given to ASIO. ASIO already had substantial powers pre-9/11 under the *Australian Security Intelligence Organisation Act* 1979 (cth) that mandated the federal attorney general to sign off on warrants allowing ASIO to monitor phone calls, access people's computers, use tracking devices or inspect the mail of a person of interest to ASIO (Lynch & Williams, 2006). In 2003, after lengthy debate in parliament, the *Australian Security and Intelligence Organisation Legislation (Terrorism) Amendment Act* 2003 (cth) was passed.⁷⁰ The legislation gives ASIO the power to not only coercively detain those suspected of terrorist activity, but people it feels might "have information of use to the government" (Lynch & Williams, 2006, p. 29). In effect, this legislation allows the intelligence organisation to detain and interrogate a 'non-suspect citizen', from the age of 16

⁶⁹ Here I refer to the defunding of the Information Commissioner's position which will make it more difficult for people to obtain government records under Freedom of Information legislation.

⁷⁰ There is a sunset clause that is currently set to expire in July 2016 unless parliament renews the provision (Burton et al., 2013).

years and over, for twenty four hours who is not even suspected of involvement in terrorist related activity (Burton et al., 2013). This twenty four hour period is only made up of questioning time, so, this can be carried out over a number of days, and can be extended by the Proscribed Authority if they are “satisfied that ...there are reasonable grounds for believing that permitting the continuation will substantially assist the collection of intelligence that is important in relation to a terrorism offence” (“ASIO Act”, s 34R(4)).⁷¹

Changes were also made to the *Telecommunications (Interception and Access) Act* 1979 (cth) that allowed ASIO to seek a warrant to intercept the communications of an innocent party, who is not suspected of involvement in any criminal activity, but someone who can “assist the Organisation in carrying out its function of obtaining intelligence relating to security” (Lynch & Williams, 2006).

Control orders were introduced as a means of detaining and monitoring a person, even when they have not been convicted of an offence. Control orders have a number of provisions that include restriction of movement and association, the monitored phone and internet usage and parole-like reporting conditions. As of 2014, only two Australians had been subjected to a control order, Joseph Thomas and David Hicks.⁷² Both Joseph and David were required to use only one telephone, and the line had to be approved by the Australian Federal Police (AFP). They could not use the internet. There were also restrictions on where they could live or stay, and permission had to be sought when not staying at an approved address. Permission had to be sought for approval to travel interstate, and approval times would sometimes take months. There were also weekly reporting requirements to a local police station and curfews. These are particularly draconian measures considering that a person need not be convicted of a crime. There have been more people placed on control orders since the Lindt café murders.

⁷¹ Previous versions of the amendments proposed by the Howard government were even more draconian, and included, the ability to seek a warrant for people under 16 years, a week long detention period that could be renewed indefinitely, in effect allowing for ASIO to hold a person ‘of interest’ who also does not have the right to silence under the legislation, and refuse to allow them to contact their family members (Lynch & Williams, 2006). Those detained would only have the right to legal representation after 48 hours of custody.

⁷² There have been several control orders placed on people since the Lindt café siege and the increase in support of the “Islamic State” organisation.

Legislation as of 2014

This is an area of law that changes significantly and quickly. The 2014 changes made Australia's CT laws even more stringent and provided for broad-scale surveillance and a crack-down on whistleblowers. In August 2014, the Attorney-General and Prime Minister announced that they would seek to introduce further measures in order to "give security agencies the resources and legislative powers needed to combat home-grown terrorism and Australians who participate in terrorist activities overseas" (Australian Government, 2014c, p. 1). The Abbott Government announced the provision of over \$600 million in additional funding for the AFP, ASIO, ASIS, Office of National Assessments (ONA) and Customs and Border Protection, the broadening of the definition of terrorism and what it means to 'advocate' or 'encourage' terrorist activities (such as on Twitter or Facebook), enabling the easier cancellations of passports, lowering the standards of proof for evidence admissible in Australian courts, and broad based data collection (Australian Government, 2014c, p. 2).

The first tranche of changes relate to the *National Security Legislation Amendment Bill (No. 1) 2014* (cth). It has provisions that allow ASIO to obtain an "Identified Person Warrant" on the basis that it believes that they are "suspected of engaging in activities prejudicial to security" (Parliament of the Commonwealth of Australia, 2014b, p. 89). This wording is extremely broad and interpretations of security may mean that advocates or those opposed to Australia's foreign policy could potentially be caught up in the application of the legislation. An Identified Person may not be suspected of anything terrorist related, however, ASIO may deem that they are likely to assist in the collection of intelligence relevant to security (Parliament of the Commonwealth of Australia, 2014b, p. 89). This enables ASIO to take multiple actions against the person, including multiple warrants for a duration of six months, and to only advise the person after that six month period that they have accessed their property. The execution of a warrant now provides ASIO permission to enter third party premises to allow access to the target premises, 'reasonable force' in the destruction of property due to the execution of the warrant, or installation of monitoring devices. The use of force is also extended to individuals. Section 33(3) of the legislation even allows for the use of surveillance equipment without a warrant. It

states; “a person acting on behalf of the Organisation does not act unlawfully by installing, using or maintaining a surveillance device, with or without a warrant...” (Parliament of the Commonwealth of Australia, 2014b, pp. 100-101). This could potentially include foreign intelligence services.

The broader wording in the legislation allows for the monitoring of both a single computer (which includes phones, PCs, laptops etc.), and entire networks. Indeed, it effectively provides for intelligence organisations to monitor the entire Australian web. In addition, the Act provides that ASIO will be permitted to disrupt, “add, copy, delete or alter” data on an individual’s computer, as well as a third party computer “or communication in transit” (Parliament of the Commonwealth of Australia, 2014b, p. 10). This is not only a significant breach of privacy, but also has the potential to implicate and target innocent people.

One of the most troubling aspects of the legislation is the immunity provided for ASIO and its “affiliates” for Special Intelligence Operations (Parliament of the Commonwealth of Australia, 2014b, p. 18). The Act states: “A participant in a Special Intelligence Operation is not subject to any civil or criminal liability for or in relation to conduct that: (i) causes the death of, or serious injury to, any person; or (ii) involved the commission of a sexual offence against any person; or (iii) causes significant loss of, or serious damage to, property...” (Sheehan, 2014, p. 1). This allows for evidence obtained illegally by ASIO and affiliates to be used in court. Several legal experts raised the issue of the above provisions essentially making ASIO immune from torture (Sheehan, 2014), and whilst in response, the Attorney-General introduced a provision to explicitly outlaw torture, the use of affiliates causes concern, particularly as cruel, inhuman and degrading treatment prohibitions are less clear.

ASIO affiliates are not clearly defined by the legislation, but may include private security or military contractors, or foreign intelligence services. The legislation now explicitly sanctions the cooperation of ASIO with organisations outside the government. Indeed, the legislation is so broadly worded that it provides immunity for a person ‘connected’ to a Special Intelligence Operation, even if they are not an authorised participant, and not in Australia (Parliament of the Commonwealth of Australia, 2014b). This is extremely concerning given the way that the US contracted

its torture to private security companies post 2001, and the increasing presence of US forces on Australian soil. There appears to be a direct correlation between the passing of this legislation and US presence in Australia. For example, the definition of security in the legislation includes mention of Australia's responsibilities to any foreign country (Parliament of the Commonwealth of Australia, 2014b, p. 76). There are also provisions for ASIS to cooperate with foreign authorities in providing weapons training and self-defence techniques to "approved agencies" (Parliament of the Commonwealth of Australia, 2014b, p. 33).

The legislation also effectively provides political protection for the Attorney-General due to the condition that he need not be advised of any Special Intelligence Operation, and no ministerial or judicial approval is required for these operations (Sheehan, 2014, p. 2). This provides for plausible deniability in relation to the actions of Australia's security personnel, which has been used for less than honourable means in many cases in the War on Terror.

There are also restrictions on whistleblowers, journalists and researchers. The first provision provides that "an employee or a person who has entered into a contract, agreement or arrangement with ASIO, ASIS, Defence Signals Directorate (DSD), DIGO, Defence Intelligence Organisation (DIO) and ONA intentionally copies, transcribes, retains, removes or deals with a record in any other matter" will be liable for ten years imprisonment, even outside Australia's jurisdiction (Parliament of the Commonwealth of Australia, 2014b, p. 35). Publishing the identity of an ASIO employee, or affiliate is now punishable by a ten year sentence (Parliament of the Commonwealth of Australia, 2014b, p. 52). This includes publishing details in relation to Special Intelligence Operations (SIOs), which the person may or may not know are SIOs at the time of publishing the material. The whistleblower provisions provide for a two to ten year sentence for any unauthorised communication. This is largely in response to the leaks by NSA whistleblower Edward Snowden, which will be explored further into the thesis.

In addition, the 2014 INSLM report raised concerns over the *Defence Act 1903* (cth) which "may generally be described as empowering and regulating the call out of the ADF in case of specified emergencies, including a terrorist threat" (Walker, 2014, p. 4). The legislation in effect authorises the ADF to shoot down an airline, killing

innocent passengers and crew as part of the call out powers (Walker, 2014, p. 1). Walker (2014) argued that the use of force must be reasonable and at all times comply with international human rights obligations – and the right to life is the most fundamental of all of these. Consequently, the INSLM raised concerns about the application of the legislation and called for the legislation to exclude permission to kill innocent passengers and crew (Walker, 2014, p. 7).

Given these expansive powers, problems arise with the CT laws for a number of reasons. ASIO remains largely unaccountable for its activities. A person is unable to request files from ASIO under FOI laws. This means that those subjected to investigations may never know, and will never have the opportunity to correct any false information that ASIO may have collected.

Much of the wording of the legislation is broad and not specifically defined. For example, there is a clause in Division 101 that creates an offence if an individual ‘intentionally’ possesses a ‘thing’ or ‘collects or makes a document’ that is “connected with preparation for, the engagement of a person in, or in assistance in a terrorist act” (Lynch & Williams, 2006). On the basis of recklessness, this may allow a person to be prosecuted for downloading information from the internet that may have nothing to do with a specific terrorist attack (Lynch & Williams, 2006). So too, there is no clear definition of what ‘intelligence’ actually means in relation to the ASIO legislation (Burton et al., 2013). The subjective interpretation of the legislation is then open to misuse.

There are also issues around independence between the executive and judiciary. Under the current legislation those delegated the power to grant questioning and detention warrants to ASIO, the Issuing Authority, are appointed by the Attorney-General. As Burton et al. (2013) quite rightly point out, the Attorney-General can appoint anyone as an Issuing Authority, regardless of their experience or independence, even an ASIO officer or a member of the executive. The level of independence of the information provided to the Attorney-General is also of concern. If the Attorney-General relies on information provided by ASIO in order to consent to a detention order, then the final decision to make the order is signed off by an issuing authority, who is appointed by the Attorney-General, in the initial step. This involves a complete lack of independence and oversight.

The lack of independence extends to the level of scrutiny placed on the decision to obtain a warrant. The Issuing Authority's role is not to scrutinise the evidence upon which the Attorney-General has sought the warrant (Burton et al., 2013). This provides a situation where information that may have been obtained inappropriately, or that has not been examined independently, could be used to detain someone who is not suspected of involvement in or knowledge of a terrorist act (Burton et al., 2013). The Special Powers provision also does not require any proof of the threat of an imminent terrorist attack, or that the intelligence sought "is capable of preventing a terrorism offence before coercive questioning is permitted" (Burton et al., 2013, p. 446).

Some have argued that the Special Powers granted to ASIO effectively enable indefinite detention (Law Council of Australia, 2008). There is a provision in the legislation that means that time is not taken into account when the person first appears for questioning; and breaks in questioning (thirty minutes for every four hours for adults and two hours for minors); and "any other time determined by a prescribed authority before whom the person appears for questioning" (as cited in Burton et al., 2013, p. 442). In addition, if a person requires an interpreter, they can be questioned for twice as long, for a maximum of 48 hours⁷³.

Coercive questioning has also been flagged as a human rights issue. Under the current legislation, failure to appear for questioning, to refuse to answer questions, or provide false or misleading information, or to refuse to provide ASIO with requested material or things is a criminal offence punishable by five years' imprisonment (Burton et al., 2013). There is no protection in relation to self-incrimination and the right to silence under the legislation. A number of civil libertarians and human rights advocates believe that these provisions undermine the right to the presumption of innocence (Burton et al., 2013; Roach, 2008).

Sometimes, at the heart of CT prosecutions, is information that has been gathered covertly and, may in-fact be deemed to jeopardise national security, or the relationship with a foreign government if the defendant is allowed to access this information (Lynch & Williams, 2006). Courts have thus found the balance between

⁷³ *ASIO Act* ss. 34R (8)-(12)

the common law tradition of open justice and the protection of national security information a challenge (Walker, 2011).

An expert report has suggested that the legislation and extraordinary powers given to ASIO do not protect Australians from terrorism (Walker, 2011). As Walker suggests, ‘defeating terrorism’ will not come from passing of CT legislation (Walker, 2011, p. 13), rather it will only serve to divide and further marginalise those already feeling like pariahs in their own society. The case of Dr Haneef was a primary example of this.

Dr. Mohammed Haneef

The whole of my career has been ruined, my family has been put into trouble and made to suffer, and my reputation has been dragged through the mud –
Dr Mohammed Haneef (as cited in McKenna, 2008)

In July of 2007, Dr Mohammed Haneef, a 27 year old medical registrar, was arrested at a Brisbane airport by AFP officers whilst attempting to board a flight to India (Chappell, Chesterman, & Hill, 2009). AFP officers at the time said that they detained Dr Haneef due to his supposed links with a terrorist attack that had taken place in Glasgow earlier that year, namely a SIM card found in the wreckage of the bomb blast (Chappell et al., 2009). Dr Haneef was interrogated and held without charge for two days under Australia’s counter-terrorism laws, specifically, section 23CA of the *Crimes Act* 1914 (cth) (Chappell et al., 2009). After his arrest, and a barrage of media coverage, Dr Haneef’s workplace and home were subject to search warrants, and persons known to him were questioned. Dr Haneef was finally charged on 4 July with “intentionally providing resources (a SIM card) to a terrorist organisation” and being reckless as to whether the organisation was a terrorist organisation. The maximum sentence for this crime is 15 years imprisonment (Chappell et al., 2009, p. 233).

As with the Joseph Thomas, David Hicks and Mamdouh Habib cases, however, it was the ‘overreaction’ by law enforcers and the political involvement in matters of law that became a cause for concern for human rights advocates (Burnside, 2007; Chappell et al., 2009). In the hours after Dr Haneef’s release on bail, then

Immigration Minister, Kevin Andrews revoked Dr Haneef's visa on "character grounds after receiving undisclosed information about his association with the alleged terrorists" (Chappell et al., 2009, p. 233). The executive then circumvented the magistrate's decision to release Dr Haneef on bail, and he was taken back into custody (White, 2007).

It was later established that the two central tenets on which the case was based were unfounded; Dr Haneef had vacated a flat before the terror suspects arrived, and the SIM card was found in Liverpool, not at the scene of the terrorist attack in Glasgow (Chappell et al., 2009, p. 233). On July 27, after it became publicly known that the legal case against Dr Haneef was precarious, he was released and his passport was returned to him, but without work authorisation. Dr Haneef left Australia and returned to India.

A subsequent judicial inquiry ordered by the Labor Government was particularly scathing of the involvement of the former Immigration Minister Kevin Andrews in revoking Dr Haneef's passport, particularly as it destabilised the important civil right of the presumption of innocence (Clark, 2008). In addition, the conduct of certain law enforcement officials in the AFP, notably Ramzi Jabbour, was highlighted in the report as being unprofessional (Clark, 2008). This case led to recommendations that Australia's CT legislation be amended because of serious concerns about breaches of basic civil liberties (Clark, 2008).

The laws, however, remain in place and are continually expanding, and concerns over the overreach of intelligence agencies have not been addressed. If anything, an expansion of the laws occurred after the election of Tony Abbott in September 2013 and under the subsequent Turnbull Government. In response to criticism of the laws, and to ensure that Australia's CT laws are consistent with its international human rights obligations, a national security legislation monitor was appointed in April of 2011 (Walker, 2011). Bret Walker QC was tasked with reporting yearly in relation to the effectiveness of the CT laws and, whether any amendments need to occur. Attorney-General George Brandis was due to abolish the role, however, was forced to reconsider the decision after a raft of new legislation was introduced in 2014. The laws remain controversial and the subject of debate, particularly around human rights issues.

Conclusion

This chapter explored the background to Australia's involvement in the War on Terror, and provides a context for the analysis of tactics used by authorities and the media to inhibit or lessen outrage at the injustice of torture in the War on Terror.

Whilst the September 11 terrorist attacks occurred in the US, there have been far-reaching impacts, including wars in both Afghanistan and Iraq, the establishment of unlawful detention programs and the torture and in some cases, deaths, of those detained. The political response was particularly important, as this provided the rationale for passing draconian CT legislation which decimated civil liberties, and provided the impetus to go to war.

The Australian involvement in the War on Terror is deeply embedded in its political alliance with the US. Not only was Australia involved in the wars in Afghanistan and Iraq, but it has now been established that the Australian military was involved in the detention and interrogation of those deemed 'terror suspects'. The involvement of some members of the Australian military and Government in the sanctioning and cover-up of torture in both Abu Ghraib and Guantanamo Bay is now well established. The Australian Government continues to refuse to investigate the actions of those involved. Along with actions overseas, they passed a raft of CT laws which have increased the powers of intelligence agencies that have little oversight, and have decimated civil liberties.

The following chapter builds on the background to the research by providing an outline of the methodology used in the research and the research question. The article selection is presented in pictorial format to provide an overview of the number of articles examined as part of the analysis.

Chapter 4: Methodology & Article Selection

Chapters Two and Three explored the background to the War on Terror and an introduction to the politics surrounding the wars in Afghanistan and Iraq, and the torture and ill-treatment of those detained. The US Government's detention and interrogation program was introduced, and the legal justification for denying those deemed terror suspects protections under the *Geneva Conventions* 1949 was explored. The Australian Government's involvement in the War on Terror was presented, and the significant issues relating to torture were examined, including the treatment of those held overseas and the lack of oversight, and the broader political and legal context operating in Australia.

This chapter presents the research design and method, including the selection of newspaper articles and the process of qualitative analysis. The chapter presents the procedures used to identify relevant articles for the study, including the keywords which eliminated irrelevant material from the database cache. The chapter then explores the analysis and organisation of data, which utilises the Outrage Management Model (Martin, 2007) to identify tactics used by authorities to minimise outrage at the injustice of torture in the War on Terror. Following from this, it explores the qualitative process used to ascertain the broader themes and structures in operation through a content analysis of the relevant newspaper articles. Finally, the chapter presents the article selection results in pictorial format to provide the reader with an overview of the quantitative results.

Methodology

The methodology builds upon a similar analysis conducted by Kupchik & Bracy (2009) in their research exploring media reporting of school crime and violence in the United States, and Brendan Riddick's (2012a) studies into the communication of political violence in Fallujah using the Backfire Model and content analysis (Berg, 2007).

Using *Australian and New Zealand ProQuest Newsstand* database, a broad search was conducted for relevant mainstream Australian newspaper articles from 2002-

2012. The key words searched were ‘terror’ and ‘torture’ or ‘abuse’ or ‘mistreatment’ or ‘ill-treatment’, and results were excluded that included the terms ‘church’, ‘animal’ and ‘child’. There were some issues around narrowing to Australian newspapers, as sometimes New Zealand papers were included in the results.

The newspapers included in the analysis were; *The Australian* (National), *The Sydney Morning Herald* (Sydney), *The Daily Telegraph* (Sydney), *The Sun Herald* (Melbourne), *The Herald Sun* (Melbourne), *The Age* (Melbourne), *The Sunday Age* (Melbourne), *The Advertiser* (Adelaide), *The NT News* (Darwin) and others covering Australian news. This represents both media conglomerates in Australia, Fairfax and News Limited. Although an extremely important issue and one that needs further investigation, results that referred to child sexual abuse and the torture of animals were excluded as these were not relevant to this study. Relevant articles included those that pertain to the ‘War on Terror’, including those discussing the actions of Western military or intelligence agents, debated conditions of confinement, torture and its use, the treatment or personal character of those detained, legal issues surrounding War on Terror or accountability for torture, and the War on Terror extending to other countries (whether through military intervention or using the same torture techniques). The articles were sorted by relevance. After the first 50 or so articles for each year, the subsequent articles tended to be irrelevant or duplicates due to the fact that most Australian newspapers run the same articles under different headlines.

Process

The first stage of processing was the quantitative recording of the data. An Excel spread-sheet was utilised to record the findings about the numerical data, including the year of analysis, how many articles referred to torture, and whether these references were in the title of the article, or the body. Results were collected in yearly intervals. These findings were then converted into tables to provide a pictorial analysis of the raw data.

The second step involved qualitative analysis which examined whether there was any evidence of the five methods of inhibiting outrage. This was documented by organising the data into yearly intervals in Word documents under the headings of: cover-up, devaluation, reinterpretation, official channels, and intimidation/rewarding people involved, and other points of interest were noted. In addition, key events and semantics within the narrative were examined and these were noted on the Word documents. Any words, phrases or quotes of relevance were recorded on Word Documents and broader narratives were noted on a separate Excel spread sheet⁷⁴ (Braun & Clarke, 2006; Huberman & Miles, 2002; Singer & Hunter, 1999). Latent themes were also noted during this part of the process (Attride-Stirling, 2001).

Content analysis is described by Berg (2007) as “a careful, detailed, systematic examination and interpretation of a particular body of material in an effort to identify patterns, themes, biases and meanings” (p. 303). Specifically, the data was examined to ascertain key messages and concepts that were being communicated through the language used (repetitive words or phrases); covert messages; the visual representations (Van Leeuwen & Jewitt, 2001) of torture; who is represented as experts or ‘reliable’ (truthful) sources on torture; the way in which the victim/criminal/perpetrator is portrayed and the labels used; and whether methods of reducing outrage are revealed or exemplified (Martin, 2007).

The primary research question seeks to answer:

Is there evidence that indicates authorities and the media use tactics to ‘inhibit outrage’ at the injustice of torture in the War on Terror in the Australian context?

Subsequent questions examine:

- What broader mechanisms, if any, support the outrage management techniques?
- How is torture defined and referred to? Who is defining it? If torture is not used as a descriptor, what words, metaphors or analogies are used instead?

⁷⁴ Note: I am not a linguist, and this will not form a large part of the analysis. The main aim is to understand the key themes being conveyed, and how and where tactics have been used to inhibit outrage.

- What attitudes are displayed towards the victims, perpetrators or the concept in general?
- What narratives are operating?
- What is the underlying political and social context?
- What is the effect of this ideology?
- Are there any omissions in the article?

Taking into account the social and political context, and the structures supporting the tactics, the organising themes were arranged into groupings creating ‘thematic networks.’ A pictorial thematic map (Braun & Clarke, 2006) was created to display connections between common themes and emergent trends, drawing upon texts that demonstrate the theme (Bryman, 2009; Richards, 2009). Emerging global themes were explored, summarised and interpreted utilising a human rights framework until saturation occurred (Attride-Stirling, 2001; Braun & Clarke, 2006).

The material was synthesised into dominant themes and the main issues of relevance were noted, along with key events and the broader political situation operating at the time. It was clear that many of the articles examined did not contain ‘factual’ information, and what was claimed by official agencies was inconsistent with other documented evidence. Thus, the information contained in the articles examined was also compared with documents that have been obtained over the years under FOI in Australia or the US, or information from formal government reports. For example, when media reports quoted Australian Government officials saying that they had performed ‘welfare checks’ on Australian citizens in US custody, this was cross-checked with material obtained under FOI to see if the visits had, in fact, taken place and what the result of the visits were. Other public claims reported in the newspapers were also checked with formal records that are not available to the public such as David Hicks’ medical records, consular reports, and the much cited NCIS report into his torture conducted by US Government officials. It is also important to note that this process of research occurred as a result of over ten years of advocacy in this area, and many personal conversations with former US captives and military personnel. Primary sources were used without incurring the need for formal interviews with torture survivors as part of the research process.

This research method was chosen for several reasons. Personal interviews were not carried out because any re-traumatisation of the torture victims needs to be avoided, and enough information was already known to me through my advocacy work, or was already in the public realm about the events that have occurred. It was also chosen because there has never been a broad-ranging study seeking to identify the tactics used to inhibit outrage at the injustice of torture in the War on Terror in Australia. As aforementioned, some studies have used the Outrage Management Model (Martin, 2007) to identify the techniques used by authorities and the media in relation to the Abu Ghraib torture photos and torture technologies, however, these were internationally focused rather than solely within Australia (Martin, 2007; Martin & Wright, 2006; 2003). Identifying methods used in the management of outrage in the Australian context was therefore important in establishing the occurrence and extent of the use of these techniques, as well as the identification of the broader themes that were occurring as part of a larger operating system. This is pertinent in ensuring that there is not only awareness about the extent to which authorities have gone to in employing these tactics, but also in contributing to strategies around torture prevention. It was also necessary to establish the general engagement with torture in the War on Terror in the Australian context, and newspapers were chosen because they inexorably report on television interviews, so they covered the main media realms. Hence, the examination of content in Australian newspapers for evidence of outrage management tactics and broader themes provides an overall picture of Australian engagement with the issue, as well as a view of the use of these methods employed by authorities to minimise outrage.

Article Selection

This section presents the quantitative findings that include the number of articles found in searches of the *ProQuest Australia and New Zealand Newsstand Database* over the period 2002-2012. The newspaper articles searched included both major media conglomerates in Australia, including News Limited and Fairfax, as well as some independent media, such as *Mx*. The following data includes articles from New Zealand as well as Australia, however, these were filtered in the main analysis.

Figure 8- Number of articles with the words ‘torture’ and ‘terror’ or the phrase ‘War on Terror’*

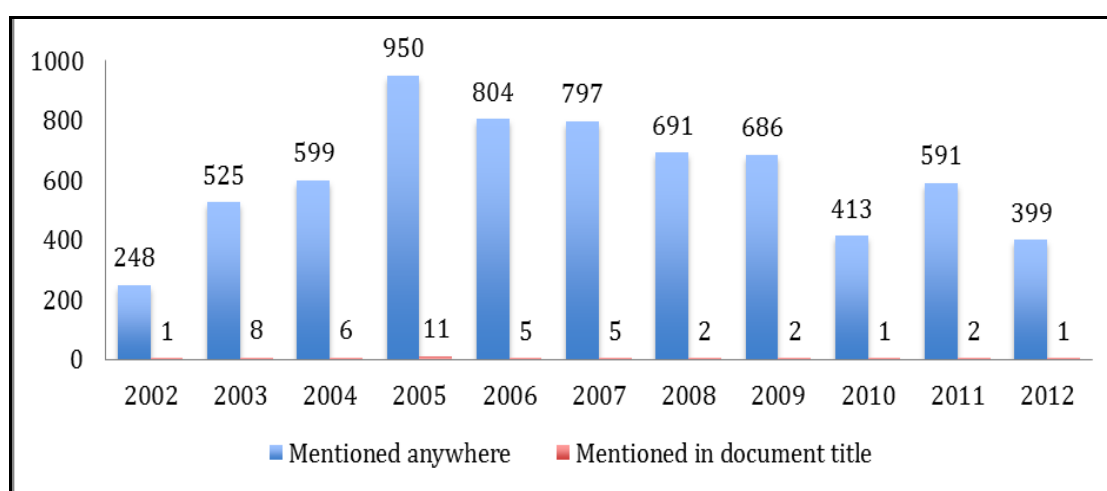


Figure 8 provides an overview of the number of articles containing the words ‘torture’ and ‘terror’ or the phrase ‘War on Terror’. The results demonstrate that the terminology is used quite liberally, as the majority of the articles were completely unrelated to the subject matter. For example, there were a number of articles about travel to Panama in 2012, and they happened to contain words such as war and torture when describing the history of the country.

When the search was narrowed down to articles that contained the words ‘torture’ as well as ‘terror’ or ‘War on Terror’, the results were indicative of a low level of engagement. As **Figure 8** demonstrates, only a few results were identified in the database and many of these results were also irrelevant. For example, in 2002 there were back-packers found murdered, and this led to an article about their deaths.

Figure 9- Number of articles containing the words ‘torture’ or ‘mistreatment’ or ‘abuse’ or ‘ill-treatment’ and ‘terror’ or ‘War on Terror’ in the title

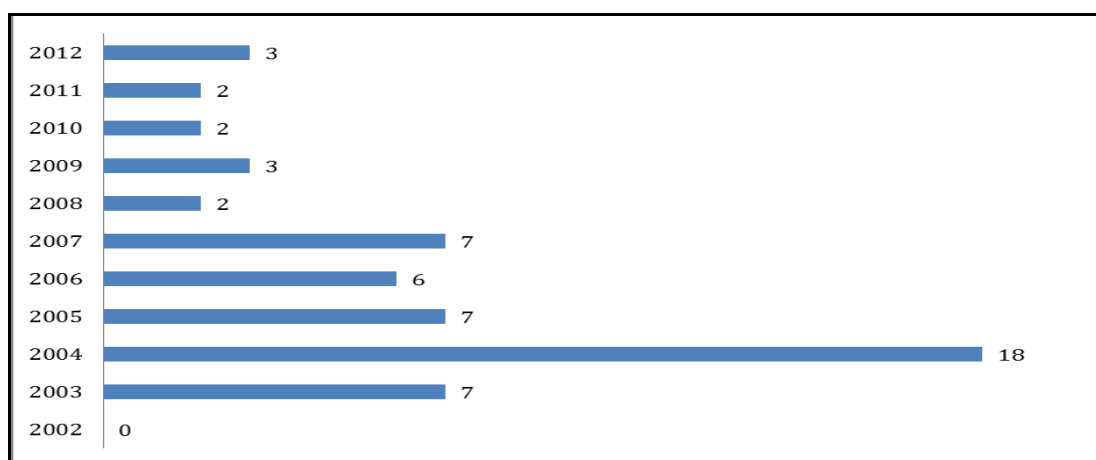


Figure 9 demonstrates the small number of articles found during a search using the words ‘torture’ or ‘mistreatment’ or ‘abuse’ or ‘ill-treatment’ and ‘terror’ or ‘War on Terror’ in the title of articles. Of the above results, the majority of articles were related to the treatment of those held as terror suspects on the War on Terror. There was a spike in articles in 2004, due to the pictures leaked which depicted the tortured prisoners at Abu Ghraib, and subsequent discussion about the treatment of Australian citizens held in Guantanamo Bay. The total number of relevant articles is displayed in **Figure 10** below. It also demonstrates that the media coverage of torture lessens greatly after 2004, and there are only one or two relevant articles with search terms in the title from 2008 onwards.

Figure 10- Number of articles containing the words ‘torture’ or ‘mistreatment’ or ‘abuse’ or ‘ill-treatment’ and ‘terror’ or ‘War on Terror’

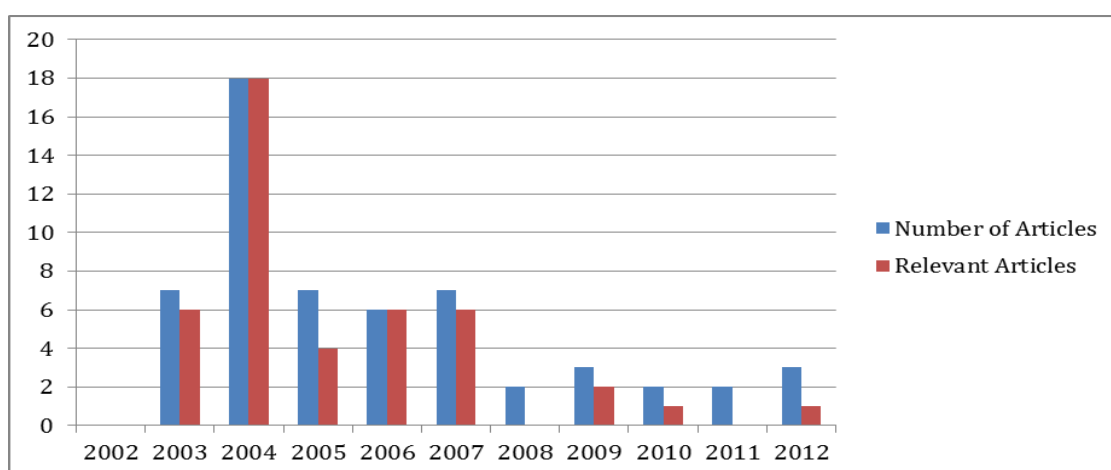
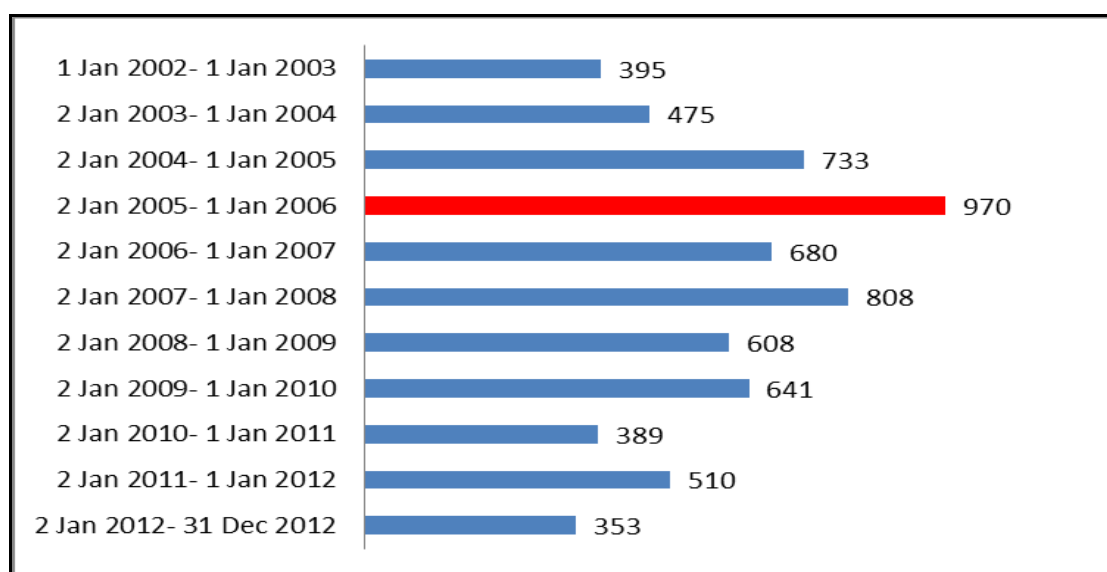


Figure 11 displays the results of the search for articles containing the words ‘torture’ or ‘mistreatment’ or ‘abuse’ or ‘ill-treatment’ and ‘terror’ or ‘War on Terror’ in the whole of the article, not just confined to the title. The results again show a spike in 2004 and again in 2005, when Mamdouh Habib was released and 2007, when David Hicks was released from Guantanamo Bay.

Figure 11- Number of articles containing the words ‘torture’, ‘abuse’, ‘mistreatment’ or ‘ill-treatment’ in the body of the Article



The above search turned up the greatest number of articles. There was a peak in articles around 2005 again, coinciding with the Abu Ghraib photos being released and the subsequent discussion around the treatment of Australians in US custody. 2005 also marks the year that Australian Mamdouh Habib was released from Guantanamo Bay, which may also account for the increased numbers, as well as the discussion about the NCIS report into David Hicks’ treatment whilst in US custody. The results also demonstrate another spike in 2007 which coincides with David Hicks being released from Guantanamo Bay, and some articles briefly mention his treatment whilst in US custody.

However, it is important to note that the majority of the articles identified were, in fact, not relevant to the study. The mainstream media would commonly use words like terror or abuse in articles about child sexual abuse, which became prevalent over the course of the decade. There were a number of articles about child sexual abuse in institutional settings, particularly within the church. In addition, there were instances

where torture at the hands of non-state actors was covered in newspaper articles, whether in relation to the torture of non-human animals, or children. Articles that addressed torture occurring in Iraq and Afghanistan at the hands of Coalition ‘enemies’ such as the Taliban, also turned up in the results. These instances were more likely labelled as torture by the newspapers than as abuse or mistreatment, particularly in the case of Saddam Hussein’s torture of people in Iraq.

Having identified articles relevant to the study of outrage management tactics in relation to torture in the War on Terror, the following chapter explores the qualitative results of the analysis. It presents the major findings of the research, focusing on the articles in light of the categories identified in the Outrage Management Model (Martin, 2007) including; cover-up, devaluation, reinterpretation, the use of official channels and the intimidation of victims or rewarding of people involved. The findings were categorised by year, and major themes were identified, such as whether there were indications that torture had been hidden from the public. Whilst primarily seeking to identify the methods of outrage management, the method included a systematic analysis of the major and latent themes in order to provide a broader understanding of the narratives, and the larger operating systems. Therefore, the following chapter explores the key research question which seeks to identify whether there is evidence of methods of reducing outrage at injustice in relation to torture in Australia in a post 9/11 environment.

Chapter 5: Evidence of Inhibiting Outrage at the Injustice of Torture

We tortured some folks – President Barack Obama (2014a).

These are the words uttered by President Obama at a press conference in August 2014 when asked about the release of a redacted summary of a report into CIA torture. President Obama's comments on that day inadvertently summarise the process of outrage management demonstrated in this chapter in several ways. First of all, when it became clear that the US Government could not engage in traditional cover-up anymore, and the extent of deception was exposed, the official rhetoric switched to the use of devaluation techniques and the reinterpretation of events. The casual remarks served to shift focus off the horrific ramifications of the US President's admission that the US Government engaged in torture. President Obama's emphasis on the term 'folks' meant that there was a connotation that those subjected to torture were somehow common or less educated; there was a clear attempt to distance himself from not only the admission, but also the humanity of those who were tortured. The reference to 'some' folks also deflected any discussion about the actual number of people tortured by US officials and their agents.

The fact that Obama did not describe the survivors as 'people' was also important. Whilst they were 'folks', they were not human beings with names, or brothers, fathers, sisters and children, and they certainly were not called victims. The US Government cast those who had been tortured by the CIA as 'others', who were different. The emphasis was also quickly shifted off the admission of torture to the fear that was felt in the US after 9/11 in order to justify the actions of those involved. Obama was quick to state: "It's also important not to feel so sanctimonious in retrospect" and he noted the "tough job" that the intelligence community had (Elliott, 2009). Indeed, the position of the US President was clear, remember the fear, forget those responsible for torture and, more importantly, forget the victims because they are not worthy of empathy let alone humanity. This outrage management strategy of cover-up, reinterpretation and devaluation is characteristic of many of the following results.

This chapter provides a discussion of the evidence of techniques used by authorities and the media to reduce or inhibit outrage at the injustice of torture in the War on Terror from 2002-2012 in the Australian context. The chapter explores rhetoric and that way that language was used to manipulate, reframe and justify torture, not only by politicians who use the power of persuasion on a daily basis (Uhr & Walter, 2014), but also the media who are powerful at shaping the narrative and are highly influential in the casting of an issue as a social problem.

A vast amount of material was used to compile the factual basis against which the content analysis was compared. This includes primary source material obtained over the course of a decade through FOI requests, official government reports, eyewitness testimony, and through advocacy work with US torture survivors/victims. The analysis examines Australian newspaper articles from 2002-2012 and looked for evidence of techniques used to stifle or minimise outrage including; cover-up, devaluation, reinterpretation, the use of official channels and intimidation of victims/survivors (Martin, 2007). The results were organised into these outrage management categories for the purpose of analysis and presentation of the findings.

Crossover between techniques is apparent in many of the categories. For example, cover-up is usually the first technique employed by authorities however, when this is unsuccessful, or they are unable to lie to the public anymore, other methods – such as devaluation of the torture victim and their torture testimony, or the reinterpretation of events – are used by authorities in order to shift attention off the perpetration of torture or official involvement. For instance, the following section on cover-up explores some of the deaths that have occurred in US detention facilities – when they could no longer hide the deaths, many of the techniques used by authorities in the aftermath focused on the reinterpretation of events. In order for text flow, the overlap has been identified in the various sections, but it is important to note that most, if not all of these categories, contain some form of overlap with other techniques of outrage management.

The Cover-up of Torture

A key tactic employed by authorities to inhibit outrage over injustice is cover-up, and it appears to be the preferred technique used by the US and Australian

governments in the first instance. As introduced in Chapter One, traditional cover-up may come in many forms, including acts that are committed out of the public eye, hiding or destroying evidence, hidden attacks, using proxies, and censorship. There are also many layers to cover up, and it is important to recognise that there are different elements of cover-up visible to different people. For example, it is still not widely known to the general public that at least 100 people have died in US detention facilities such as Guantanamo (Greenwald, 2009), so that is why some deaths are included in the cover-up section. Indeed, in the course of my advocacy in this area over the past decade, it has become apparent that many people in Australia think that Guantanamo closed years ago.⁷⁵ It is also still not accepted in some sections of the community that torture occurred in US run facilities as the official narratives were powerful in presenting and reframing events to suit the needs of authorities.

Even though some members of the public have been concerned about the US torture program, mainstream cover-up was successful in relation to the broader community by reframing the treatment of prisoners as humane and preventing a major blowback to the US Government. These examples are referred to in the following section as ‘mainstream cover-up’ because whilst authorities have employed techniques such as reinterpretation, their goal was cover-up for the mainstream public who were not going to delve behind the public comments made, or official explanations.

Comparatively, people who have been closely following the US torture program over a number of years would see cover-up operating in a different way. For example, the blatant removal of evidence from crime scenes, and the use of official channels to hide the truth about what is happening behind closed doors; such as the creation and subsequent reporting of mock prison cells in Guantanamo that were nothing like the reality for those detained, as depicted in Figure 12 on the following page. Some in the human rights community are aware that these mock cells in Guantanamo were set up for the purposes of propaganda; however, the general public may not be aware of the extent of deception by the US Government.

⁷⁵ For example, in the course of my university teaching and advocacy work, it has become apparent that many in the general community are unaware of Guantanamo’s existence, or if they do know about the facility, they believe that Obama closed it years ago. It has made advocacy in this area a challenge in Australia.

In addition, because of the pattern of tactics used by authorities in relation to torture, it is clear that the tactics of mainstream and traditional cover-up described in this section are more than likely used in conjunction with other techniques, most notably, devaluation and reinterpretation, after cover-up is no longer sufficient. This means that there is



Figure 12- One of the cells set up with 'comfort items' for reporters in Guantanamo

(Source: Billings, 2007)

significant overlap with the categories of reinterpretation and devaluation in this section, whether referring to 'mainstream cover-up' for those who do not follow the issue closely, or more traditional cover-up that concerns actions being carried out specifically to hide the truth from the public, such as the destruction of evidence, or failure to release information to the public. Consequently, it is necessary to include both mainstream and traditional forms of cover-up in this section that overlap with other techniques.

Likewise, it is important to recognise that cover-up by its very nature means that a great deal of information does not make it to the public realm. For example, anecdotal evidence suggests that more people have been tortured and killed in black sites than has been reported in the public realm. Most of the information released about people being tortured – sometimes to death – has come about through unofficial leaks, whistleblowers and FOI requests, years after the events have taken place. The nature of cover-up means that the reality of the US torture program is unlikely to be ever widely known, and it is important to remember that these results are based on what was reported in Australian newspapers. For instance, if deaths were never recorded, there will be no documented evidence and no account will be reported in mainstream newspapers.

Some of the instances of cover-up that didn't make it to the newspaper analysis have already been explored in Chapter Three; including one instance where Australian officials, notably Sir Peter Cosgrove, was involved in purposefully hiding the death of Tanik Mahmud from the public in order to protect the US and UK Government from embarrassment (Cosgrove, 2004, p. 2). Also explored, was the evidence that points to Australian military personnel being involved in the killing of civilians that

were wrongly labelled insurgents (Blenkin, 2013), the deliberate or reckless transfer of prisoners to organisations or countries that would engage in torture (Snow & Wroe, 2013), and the mutilation of bodies in Afghanistan (Wroe & Callinan, 2016). Whilst these instances did not make it to the mainstream media as part of the analysis, they still form part of cover-up given that awareness of the events were deliberately kept from the public realm.

The cover-up of the US Government enacted torture program commenced from the very beginning of the War on Terror. As described in Chapter Two, the program itself was created behind closed doors, in the White House by those at the highest levels of the Bush Administration. It took years before the public was made aware of the brutal methods authorised and advocated by members of the Bush Administration, because evidently the public was not meant to know.

Torture in the War on Terror was carried out in secret locations, in black sites and in dark rooms that were not even classified as detention facilities. They were out of the eye of the public for the simple reason that the US Government did not want the public to know what they were doing to people detained. Those who were subjected to rendition, and even those who were transported to places like Guantanamo, were subjected to torture by proxies, such as private security companies, or shuffled between jurisdictions, such as torture ships, in order to cover-up what was really going on. Those rendered to third countries were at the mercy of the military, PMSCs or intelligence agencies in places like Morocco or Egypt, and they were disappeared from their family and friends. Some torture victims were returned to their families after being dumped on the side of a road by private security contractors after being held in black sites for months, and sometimes even years. It is likely that some renditions have never been reported for fear of retribution. There is much shame attached to torture, and this has resulted in many victims refusing to speak about their experience.

As described in Chapter Two, the increased use of PMSCs has resulted in the cover-up of torture for the reason that many of their activities are carried out covertly. There was minimal coverage of torture carried out by these contractors until the later years of analysis, and because they operate with impunity in countries like Iraq and Afghanistan, many of the cases still remain hidden from public view. The torture of

prisoners in black-sites was widespread and evidence that points to the use of these private contractors being involved in torturing prisoners to death has been revealed over the years.

Even detention facilities deemed by authorities as ‘legitimate’, like Guantanamo, were subject to censorship. Prisoners were unable to communicate their suffering to the outside world and authorities even kept some prisoners away from the ICRC, whose members were tasked to ensure captives were being treated humanely, and who are bound by strict confidentiality agreements. In all cases, the torture survivor/victim’s voice was removed, not only through the ‘act’ of torture and the inability to convey the pain of torture, but the fact that they were unable to communicate their suffering to the outside world because the brutal actions were conducted in secret locations, and out of the public eye. For example, even when journalists were allowed in to places like Guantanamo, torture victims were deliberately prevented from communicating with journalists and the reality of their suffering was prevented from being conveyed to the public.

US Government Cover-up

The examples of cover-up in the US have been numerous over the years, and many were reported in Australian newspapers over the ten year period analysed; even though the majority were never reported as an actual ‘cover-up’. As previously mentioned, many of the instances of cover-up also utilise the technique of reframing, or the reinterpretation of events, which served to keep the mainstream public in the dark about many of the actions being perpetrated by officials, and only those who worked closely on the issue were aware that there was cover-up occurring in specific instances.

Particularly in the early years, and to engage in mainstream cover-up, Bush, Cheney and Rumsfeld would state that prisoners detained were being treated “humanely” and there were outright denials that the US Government and its agents tortured prisoners ("Access to P.O.W.'s eases concerns over conditions - War on Terror", 2002). As early as 2002, Rumsfeld stated, “There’s no doubt in my mind that it is humane and appropriate and consistent with the Geneva Convention *for the most part* [emphasis added]" (as cited in Gardiner, 2002). And on another occasion he said: "We're going

to treat them properly. It's not going to be a country club, but it will be humane". "They are being treated vastly better than they treated anybody else over the last several years and vastly better than was their circumstances when they were found" (as cited in "Prisoner may face trial here," 2002a, p. 4). The admission that the Bush Administration almost as an aside, noted that prisoners would be treated "in the spirit of", rather than "in compliance with" the *Geneva Conventions* 1949 (GCs) was overlooked in many articles, and the emphasis on "humane" treatment as a subjective term was not explored. When former President Bush visited Australia in 2003, he stated, "We don't torture people in America and people who make that claim just don't know anything about our country" (as cited in Kerin, 2003). Indeed, US authorities even went as far as saying that prisoners in US custody were being "pampered" because they have access to "bug spray", with "halal meals and are provided with free copies of the Koran" (Murdock, 2002). This rhetoric served cover-up in the general community by stifling debate about the treatment of prisoners, and given that officials were spouting claims of humane treatment, there were many who did not question the official comments.

Besides outright denial, the more overt methods of mainstream cover-up came in several forms over the years. This ranged from US officials' reinterpreting events by denying that black sites existed ("Terror suspects 'held on island'", 2008), disallowing media or other independent bodies into all parts of detention facilities, refusing access to all prisoners within detention facilities, and destroying or suppressing evidence of torture. For example, in 2007, it was revealed that the CIA destroyed videotapes depicting the interrogation of prisoners ("Torture tape denial", 2007). US officials denied that any of the tapes contained evidence of torture; however, it was hard to believe given the context of the tapes being destroyed, and the admissions from US officials and agents that the US Government did in fact sanction the torture of people. Martin (2007) states that the first instinct of most criminals is to ensure they leave no evidence of their crimes, and then to try not to get caught. The destruction of tapes and the prevention of independent scrutiny of the crime scenes were clear and blatant over the years.

In the early years of the War on Terror, definitions of what actually constituted torture also served to both cover-up and reinterpret events, by barraging the public

with arguments over semantics rather than the war crimes and cruelty that was occurring. This was extensively repeated in the Australian press. For example, there was much debate over the use of waterboarding and whether it constituted torture, much of this is covered in more detail later in this chapter. Rather than denouncing a particular technique as torture, US officials would instead, refuse to answer one way or another. For example, Brigadier-General Thomas Hartmann, refused to say whether waterboarding constituted torture and whether evidence obtained using the controversial interrogation method would be used to prosecute prisoners in Guantanamo Bay (Davies, 2007). Rather, there were word-plays with the semantics of ‘abuse’ and ‘coercion’.

One of the more alarming examples of the cover-up and reinterpretation of torture involved the deaths of three men in Guantanamo Bay, which was introduced in Chapter Two. On 10 June 2006, then Guantanamo commander, Rear Admiral Harry Harris, reported that three ‘detainees’, Salah Al-Aslami, Yasser Talal al-Zahrani, and Mani Shaman al-Utaybi, had committed suicide the night before, and were found hanging in their cells. This is despite the fact that the men were found with rags shoved down their throats, and their hands and feet were bound (Khan, 2008). The official narrative touted by Harris was, “I believe this was not an act of desperation, but an act of asymmetrical warfare waged against us” (as cited in Rose, 2004, p. 64). The official rhetoric was immediately shifted off the deaths of the three men to the crafted narrative that they were, even in death, engaging in act of war from the grave. Whilst officially, the US Government stated that investigations would take place into the deaths, events were set into motion to ensure that no credible investigation would be successful. For example, no conclusive independent autopsy could be carried out on the men because their bodies were returned to the family almost a week after their deaths, which meant that toxicology reports would be affected (Khan, 2008). Most disturbingly, organs essential to ascertain the cause of death had been removed, including the larynx and brain, and finger and toenails were cut and cleaned shortly after death so that no DNA evidence could be retrieved (Khan, 2008). The results of the autopsy on Salah al-Aslami were troubling, despite the limitations. The coroner found evidence of injections, bruising on the back of the hand, a punctured vein and that one of Salah’s teeth had been broken, while he was still alive (Khan, 2008). The

US Government and its military were powerful enough to set the narrative that the men killed themselves as an act of warfare, and this inevitably shifted focus off the suspicious nature of the deaths, the injuries sustained to the bodies and the fact that body parts were removed so that no independent oversight could be conducted. They had complete control of the information that was released to the public, and worked quickly to set a particular narrative.

In 2010, a brave whistleblower named Joseph Hickman came forward to counter the official narrative and provided eye-witness evidence that he had seen ‘packages’ being transported from a secret black site within Guantanamo, called Penny Lane, or Camp No, as in ‘no, it does not exist’ (Hickman, 2015; Horton, 2010). It was established that prisoners were subjected to torture in these secret camps within Guantanamo at the hands of “non-uniformed government personnel” believed to be private contractors and the CIA (Horton, 2010). Despite this, the official narrative was reported uncritically in Australia, and the deaths were called suicides even though evidence to the contrary had surfaced. The military was also using the tactic of designating anyone who called the deaths into question as conspiracy theorists, and even human rights organisations became reluctant to label the deaths as murders rather than suicides.⁷⁶ This is another key tactic used by authorities to devalue torture claims.

A high-level of cover-up also occurred in the form of sham investigations. Even when investigations were ordered after people in US custody were tortured to death, the full reports were kept from the public by US authorities. For example, the deaths of two men, known as Dilawar and Mullah Habibullah, on 4 December 2002, at Bagram airbase were only made apparent to the public when redacted documents from a report conducted by Admiral T. Church (2004) were leaked in 2005. The US Government’s refusal to release the full report was regarded as a cover-up in the US (Leopold, 2009). It turned out that the men had died two days after Rumsfeld had authorised “aggressive interrogation techniques”, and



Figure 13- Sketch by Thomas Curtis showing how Dilawar was chained to the ceiling (Source: Golden, 2005)

⁷⁶ I worked for a human rights organisation at the time, and was prevented from publishing an article denouncing the deaths as murders.

they were handcuffed to fixed objects to keep them awake, and subjected to kicking, punching and “compliance blows” to the legs by interrogators (Leopold, 2009). As depicted in Figure 13, it was discovered that Dilawar was chained to the ceiling by his wrists for around four days, and a guard tried to force him to his feet, but he could no longer stand because his legs had been “pummelled” by guards (Jehl, 2005). He died chained to the ceiling with legs so badly injured that if he survived, they would have been amputated because, as the coroner noted, they were similar injuries to a man whose legs had been run over by a bus (Armed Forces Regional Medical Examiner, 2003; Jehl, 2005).

Eventually, documents released under FOI three years after, demonstrated that the blunt force trauma to the legs was implicated in the deaths as a result of pulmonary embolisms (Leopold, 2009). The summary of the released report was called a white-wash by the American Civil Liberties Union (ACLU) because its conclusion was that there was no evidence that US policy condoned abuse or torture of prisoners (Leopold, 2009). However, if it were not leaked to the public, there was no way that the deaths of the two men would have made it to the public realm. After a long battle, in March 2003, a coroner ruled that deaths which had occurred at Bagram airbase were homicides (Campbell, 2003). The media reported that the US military was subsequently holding an investigation into the deaths. Upon completion of the investigation, the military would decide whether charges should be laid. Of course, by the time the report was handed down, many in the public realm had either forgotten about the reported deaths, or the outrage had been watered-down through negative reports of the men’s personal characters. In a blatant act of reinterpretation, after the coroner’s report was handed down pointing to homicide, a spokesperson from the Pentagon stated that just because the deaths had been ruled a homicide, it did not necessarily mean that the person had been unlawfully killed, thereby attempting to legitimise the brutal torture and death of the men involved (Campbell, 2003). Besides the obvious problems with the Pentagon investigating their own colleagues, the blatant cover-up was clear.

The US Government systematically attempted to cover-up the deaths, and tried to prevent the public from being made aware of the details. When the pages were released, a protracted legal battle for the un-redacted and full report ensued for years,

utilising official channels to further stifle the outrage. Independent authorities were prevented from accessing the crime scene and evidence was tainted. In a clear use of official channels to minimise outrage, it was the military that made the final decision as to whether charges would be laid and as expected, only a few lower level soldiers were charged; but most of the charges were later dropped (Jehl, 2005). The others involved were simply demoted or given a letter of reprimand (Jehl, 2005). The process was drawn out, so that the outrage had been minimised. Journalists were not provided access to facility at Bagram, and therefore the public was completely reliant on the military explanation for the deaths that occurred. Most prominently, denial became a central feature of the cover-up due to the military reinterpreting the event to mean that just because men had died, it did not mean that any misconduct had taken place.

This was certainly not an anomaly, and the cover-up of abuse and torture also occurred with the release of other official reports into ‘detainee treatment’, which were either leaked years after the torture or death of prisoners, or carried out with the obvious intention that the public would never know about it. In the later years, and after a number of non-independent investigations were carried out,⁷⁷ the reports still white-washed the experience of prisoners, to the extent that even when evidence from the soldiers themselves was presented to investigators, they still called into question the reliability of the accusations, or concluded there was no evidence of abuse in order to protect those higher up the chain of command (Apuzzo, 2007; Naval Criminal Investigation Service, 2006). Countless examples can be provided, including:

- The Schlesinger Report (2004) which concluded that out of 300 cases of ‘reported abuse’ in all US detention facilities, only 66 were substantiated. The report noted that “There is no evidence of a policy of abuse promulgated by senior officials or military authorities” (as cited in Greenberg & Dratel, 2005, pp. 908-975).

⁷⁷ I say non-independent because the investigations were largely carried out by government officials, or the same military forces accused of torturing prisoners. For example, the NCIS report into David Hicks was a report that was authored by the Navy, and they were investigating their own colleagues who had taken photos of David naked, hooded and shackled (Naval Criminal Investigation Service, 2006).

- The 2003 death of Dilar Dababa which implicated US forces in Iraq (Leopold, 2009).
- The death of a man at the Special Forces Compound in Iraq, termed “the disco”. He was subjected to physical assaults, like kicking, his jumpsuit was filled with ice, he was hosed down and made to stand for long periods of time, subjected to a cold air-conditioner, he was forced to lie down and drink water until he vomited or near asphyxiated, his head was slammed against a hot steel plate during interrogations, and forced to do leg-lifts with bags of ice tied to his legs (Leopold, 2009).
- The investigation into the death of Abed Mowhoush who died of asphyxiation after he was bound in a sleeping bag by US forces during an interrogation in 2003 (Leopold, 2009).

These deaths only made it to the media in the US around six years after the torture and deaths occurred, and only because the ACLU filed FOI requests. Prior to the FOI documents being released, the public was unaware of most of these investigations, and they were rarely reported in Australian papers, if at all. If they were reported, they were just minor re-print articles written by US staff writers. In addition, as is consistent with reinterpretation, even when prisoners were tortured to death, the US mainstream media referred to the deaths as abuse, or assault, rather than torture (Golden, 2006; Jehl, 2005).

A similar situation occurred when the photos of tortured men at Abu Ghraib were released in 2004, and the Bush Administration used cover-up tactics in a number of ways in an attempt to inhibit outrage at injustice. The cover-up began long before the photos were released, and it is likely that the public would not have been aware of the torture that occurred if it were not for the photos being released in the first place.

The torture techniques used on the men were devised behind closed doors and the media was certainly not allowed into the facility. When the photos were released, however, the Bush Administration switched from cover-up to using other methods of minimising outrage, such as reinterpretation and devaluation. Bush appeared on televisions around the world reinterpreting events by stating that “we don’t tolerate

these kinds of abuses”, and said there was a big difference between what Saddam Hussein did and the actions of the US military (as cited in "Rumsfeld must bear cost of abuse damage," 2004). Bush used the technique of comparison here by attempting to assign legitimacy to the brutal actions of the US military, and contrasting them to that of the “extreme torture” perpetrated by Saddam Hussein (“Saddam’s execution the wrong option for many Iraqi’s”, 2007). Following this strategy, Bush stated that “in a democracy...mistakes are made. But in a democracy those mistakes will be investigated and people will be brought to justice” (as cited in "Rumsfeld must bear cost of abuse damage", 2004). The official investigation that ensued, targeted lower level soldiers and failed to hold to account any of the officials who ordered or carried out torture. There was also some level of censorship in the investigation, and the public was not made privy to the events that led up to the torture of prisoners until well after the events.

The intelligence community was also at pains to distance themselves from the photographs, and FBI memos were released demonstrating their concern over techniques such as sleep deprivation, use of military dogs, environmental manipulation such as the use of loud music and "sensory deprivation through the use of hoods, etc." (Davies, 2004). These protests did not change the fact that many FBI employees were involved in the interrogations and torture that occurred in different US detention facilities. Up until this point, they in fact aided in the cover-up by either standing by in complicit silence, or largely failed to step-in and stop techniques they thought had crossed the line.

The tactics of mainstream cover-up extended to the legal system, particularly in the later years when the Obama Administration refused to prosecute those involved in torture, including the authors of the so-called ‘torture memos’ (Elliott, 2009). Heads of state and officials from several countries over the years emphatically stated that they did not know that prisoners were being tortured in US custody; however, as the years went on, and documents were released or leaked, it became clear that they were fully aware that prisoners were being tortured. For example, in 2010, a document in Tony Blair’s handwriting was released referring to UK prisoners being “ill-treated” just months into the War on Terror (Doyle, 2010; "Spy boss denies cover-up - Torture claims are false", 2010). This document as well as others, point to

the Blair Government being aware of the extent of abuses occurring in places like Iraq and Afghanistan, including the participation of some UK soldiers in the atrocities being committed.

Another form of cover-up operated through official channels: either by denying FOI requests, stalling the release of material, or releasing material that was heavily redacted on the grounds that it would compromise national security. In 2011 alone, ninety-two million documents were classified as 'restricted' in the US, as they were said to contain official secrets (Coll, 2013). FOI requests both in the US and Australia have been stalled for years whilst government bodies 'consult' with those involved in the US torture program, and government agencies provide them with an opportunity to censor the documents prior to release.⁷⁸ The use of the legislative clause that allows governments to hide information from the public on 'national security' grounds, or to protect 'foreign relations', has prevented a host of documents from being released in Australia and the US. Technicalities are used to prevent the release of material that would cause embarrassment to officials. For example, requested documents have been redacted or refused because officials have narrowly interpreted terminology such as 'torture' or 'abuse'. Some agencies have refused to process requests all together on practical grounds, stating that it would take up too many resources to search for documents. Other agencies have stated that officials took emails with them when they left office, so there are no records pertaining to the request.

In the case of photos depicting prisoner ill-treatment and torture, the Obama Administration prevented the release of the photographs citing concerns over national security and the safety of US forces ("America must face ugly truths of 'War on Terror'," 2009). The release of a US Senate Intelligence Committee report into the Bush Administration's interrogation program was continually stalled. Reports have confirmed that the CIA hacked into the computer network established for the inquiry and removed approximately 1, 000 pages, including an internal CIA review (Glaser, 2014). The CIA blamed the White House for the removal – the White House denied such a claim (Glaser, 2014).

⁷⁸ For example, after successive appeals, I have been waiting four years for documents requested from the Prime Minister's office in Australia.

In relation to Guantanamo prisoners, defaming the prisoners, or pressing charges against them were further techniques used to swamp the public with counter-narratives that contributed to the cover-up of torture in the general community. For example, a week after the CIA admitted to waterboarding some prisoners, they charged Khalid Sheikh Mohammed with war crimes in order to shift the focus off his torture (Balogh, 2008). The results demonstrate this was a clear strategy used by the authorities as it was employed a number of times over the years, including with the Australian torture survivors/victims.

The US Government went to great lengths to prove that Guantanamo prisoners were being held in humane conditions, particularly after the Abu Ghraib photos were released. The spin doctors set up mock cells to show the media, complete with items such as clothes, shoes and books. Former prisoners, including Australians, would later testify that the items shown to the media were deemed 'comfort items', and that in the early years, they were not given access to many of the items put on show for the media to report – including toilet paper (Hicks, 2010; "Hicks kept in kennel, says lawyer", 2002).

Australian Government Reinterpretation that Contributed to Mainstream Cover-up

Australian PM Howard and his cabinet are steadfast in their support for USG policy...John Howard and his government have taken pains to defend our actions consistently, even if it costs them short term political points – Cable generated by the US Consulate in Melbourne in 2006, released by WikiLeaks (US Consulate Melbourne, 2006)

The rhetoric and obfuscation used by the US Government to cover-up crimes against humanity ultimately filtered down to Australia, in large part, so that Australian officials could coordinate public spin and stifle any blowback to the US Government. In fact, evidence suggests that Australian officials went to enormous trouble to cover-up the torture committed by the US Government and its agents in the War on Terror. There are a number of specific examples of this cover-up that predominately centre around the way in which torture is reframed and reinterpreted (by the media, the US and Australian Government). This ties in with the tactic of

reinterpretation and the formal mechanisms that could have placed independent scrutiny on the actions of the US and Australia, but instead, have been avoided or softened by the Australian Government and media.

Probably one of the most pertinent examples was exposed during 2006, when it was revealed that the Howard Government was using speaking notes provided by former US Defense Secretary, Donald Rumsfeld, to defend the treatment of former Guantanamo Bay prisoner, David Hicks. Former Attorney-General Philip Ruddock denied that David was being held in solitary confinement, rather, he used Rumsfeld's terminology, calling his confinement "single celled occupancy" (Baker, 2006). This was apparent on several occasions over the years.

There are numerous examples of the Howard Government defending the US Government's treatment of prisoners, including Australians. The majority of comments made by the Australian Government were outright denials that anyone was being 'mistreated', let alone tortured. Whilst credible and voluminous testimony was surfacing about the torture occurring in Guantanamo Bay, Howard Government Ministers obediently stated "there has never been any evidence of abuse or maltreatment" ("MP denies abuse talk", 2006). The papers compliantly reported and ministerial statements were left largely unchallenged in relation to Australian prisoners (Debelle, 2006; "'Torture' of Aussies blasted by lawyers", 2004). There were even denials that Australian prisoners were complaining about their treatment and torture: "David Hicks has never complained about mistreatment to us at all," Mr Kemish [from DFAT] said. "He has described his treatment as fair and professional" (as cited in "US probe on torture claims by Aussies", 2004). Subsequent FOI documents, testimony, WikiLeaks releases and legal evidence has demonstrated this was not the case, and all of the Australian prisoners, Mamdouh Habib, David Hicks, Ahmed Aziz Rafiq and Joseph Thomas, reported their mistreatment and torture to Australian officials.

In 2008, the Australian Government was in damage control over the rendition of Mamdouh Habib to Egypt. The Australian Government vigorously denied that they knew Mamdouh was taken to Egypt. However, it was later revealed in a Senate Estimates hearing that the former ASIO head, Dennis Richardson, was personally

involved in discussions about the “hypothetical possibility” of Mamdouh being taken to Egypt (O'Brien, 2008a). In fact, documents tabled in Federal Parliament clearly demonstrated that rendition was discussed with senior officials at a meeting in Canberra on 23 October 2001 (O'Brien, 2008a). But for years the newspaper articles relating to Mamdouh Habib focused on his alleged personal conduct, rather than the Australian Government's actions or knowledge of his treatment. This was effectively a cover-up to the general community because many believed the official narratives, and it was not until years later, after most had forgotten the event, that the truth was finally revealed to the public.

As aforementioned, the misrepresentations about torture at Abu Ghraib went even further when it was revealed that George O'Kane, an Australian military legal officer, was involved in providing legal advice in relation to interrogation techniques used at Abu Ghraib (Brooks, 2015). The Howard Government protected O'Kane from testifying at any US investigations, and from any scrutiny in Australia. Although “Mr Howard said neither Major O'Kane nor any Australian Defence Forces member witnessed any mistreatment” (McPhedran, 2004), it was later revealed in Senate hearing documents and documents released under FOI that this was, in fact, untrue (Public Interest Advocacy Centre, 2011d).

Perhaps even more disturbing than outright denial and blame-shifting, was the Australian Government lamenting US Government assertions that it would not use torture. In 2006, former Attorney-General Phillip Ruddock stated, “The point the United States has made is that it will not use torture and those instructions have been given to their agencies and that may well limit the capacity of intelligence organisations in the future...” (as cited in Sproull, 2006). In October 2006, Ruddock went a step further when he declared “I don't regard sleep deprivation as torture” (as cited in Smiles, 2006). This assertion made headlines, given he was wearing his Amnesty International badge at the time, and even members of the Australian military came out to publicly lambast the former Attorney-General's assertion. Ruddock's comment also prompted a pro-torture article that stated “If sleep-deprivation meant saved lives, would we seriously object to it?... We know there are rooms without windows where there are things done in our name to preserve the values we take for granted...” (Schembri, 2006).

The reinterpretation and mainstream cover-up did not only occur as a result of the blatant misinformation provided to the public, there was also lying by omission. For example, when David Hicks was returned to Australia from Guantanamo Bay, one article stated that he was “‘elated’ to be in solitary confinement” (Debelle, 2007). The journalist from *The Age*, Penny Debelle, failed to report that David was suffering from PTSD as a result of his torture and that, at the time the article was written, he was denied blood tests requested by family members in order to ascertain what drugs he had been injected with in Guantanamo (Hicks, 2010).

Reducing outrage about the torture of people in Middle Eastern countries was far more effective in the mainstream, as not much information made it to Western newspapers. A few newspaper articles detailed that people were kidnapped and tortured by US security forces from different parts of the world over the ten year period studied here. For example, in 2010, an Iranian nuclear scientist reported that he was kidnapped from Medina by US agents (Karimi, 2010). However, the *Advertiser* touted it as a propaganda campaign launched by Iran against the US and the allegations were never taken seriously. Many more people have disappeared and sustained injuries consistent with being tortured, yet the public will never know about them.

A common theme in the material examined was the technique of powerful entities controlling the narrative by preventing the truth from getting into the public realm, holding sham investigations and stalling the outcomes which only focused on lower ranking soldiers. The evidence also demonstrates that shifting the focus off any mention of torture was used as a tactic of minimising outrage. The use of denigration, or techniques to remove the credibility of the person making the accusation was employed in many of the cases examined. The emphasis was always placed on the accusations levelled against the torture victims, rather than their torture.

Torture was conducted in black-sties and places of detention out of the public eye, such as Guantanamo, Bagram and the Salt Pit. Whilst Guantanamo was the most visible of all US detention facilities, authorities went to great lengths to hide what was really happening behind closed doors. Not only have journalists been prevented

from seeing the reality of many US detention centres, when they have gained access, it has been a sanitised and misleading view of the true situation for those detained.

Sending people to third countries for rendition, or using private military and security contractors was common. Both Joseph Thomas and Mamdouh Habib describe being tortured whilst US agents watched. Blatant cover-up has included the destruction of documents and videotapes that depicted interrogation, such as the CIA destroying their interrogation tapes. FOI requests have been either stalled, heavily redacted or denied in order to prevent the truth reaching the public, both in the US and Australia. And finally, censorship has been used to prevent people from finding out the truth about what has really occurred. State Secrets Privilege, and other national security clauses, have been used to prevent cases from going to the courts. Consecutive US administrations have passed legislation to prevent torture survivors from bringing cases against their torturers – and those who ordered torture remain covered by diplomatic immunity.

Devaluing the person/s who are tortured

Shackled like wild animals, deprived of sight, sound, smell and touch, al-Qaeda terrorists kneel before their American guards in the Guantanamo Bay prison camp (Lowther & Rosenberg, 2002).

Devaluation involves lowering people's view of the victim or group of people (Martin, 2007). It may entail labelling the victim, personal attacks, and finding or creating dirt. The overt and widespread devaluation of those who have been tortured in the War on Terror is one of the most troubling findings of the research, and of all of the methods of stifling outrage identified in the Model, this area contained the most examples in the Australian media landscape. Evidence demonstrates that not only have many Australian officials and journalists been overt in their denigration of torture survivors and victims, but they have also failed to hold perpetrators to account. Even those who would be termed the more 'liberal' or 'left-leaning' journalists, have been equally responsible for denigrating torture survivors and toeing the official line. In fact, the denigration of torture victims by media outlets like the Australian Broadcasting Corporation (ABC) could be seen as worse, given

that they are generally seen as a more ‘reliable’ and credible media source (Roy Morgan, 2004).

Howard Bloom (1995) argues that as a condition of survival, animals, including the human variety, are genetically programmed to ‘dispose’ of those who are different. He describes the story of Bertha Krupp, whose son ran a concentration camp and was responsible for the torture and murder of countless human beings in Nazi Germany. She saw herself as a compassionate and caring person – she cared for the sick and was kind and charitable. The differentiating feature in the circle of her concern was that Jewish people were seen as less than human; she called them ‘stuke’, meaning livestock. In the Australian context, the response to animal cruelty has been strong and decisive, compared to the response when allegations of torture were revealed against those detained by the US Government in the War on Terror. This denigration of certain human animals to non-human animal status can be seen throughout history as an excuse to kill, torture, maim because they are different from ‘us’.

Throughout history, removing the humanity of the ‘torture target’ by the state has been a central practice. In Chile, targets were named ‘humanoids’ to distinguish them from human beings (Bloom, 1995). Race has been central in separating those who deserve to be tortured from the humans who deserve rights. The torture of African-Americans demonstrated by lynchings was a part of designating them slaves, inferior to white masters. White Australian history is also one founded on the torture and massacres of Aboriginal and Torres Strait Islander communities (Reynolds, 2013). Historical accounts document the way that the Europeans who invaded and occupied Australia used the excuse that they were civilising the so-called ‘savages’ (Reynolds, 2013). In the same way that African-Americans were lynched and left on display for the whole community to see, Australia’s First Peoples were subjected to public and private displays of torture in order to reinforce their lack of humanity (Brooks, 2014).

Whilst Aboriginal people are still the target of racist policy, more recent times have seen the focus of xenophobic ‘othering’ in the mainstream rhetoric shifted towards migrants and those seeking asylum. With the War on Terror, it is those of Islamic faith that have become the target of this process (Gordon, 2014). Being of Muslim

faith has been conflated with racial origins; the terminology ‘of Middle Eastern appearance’ is now commonly heard alongside stories about crime, violence, and most prominently, terrorism.

Understanding the social climate is important in understanding the origins of the devaluation process in the Australian context at the time. Under the leadership of John Howard, nationalism grew in the years prior to September 11 and this was connected to the further denigration of Australia’s First Peoples and asylum seekers. Howard’s policies took a hard line on asylum seekers arriving by boat in what many saw as an attempt to gain voter support (Briskman, Goddard & Latham, 2008). What was termed the ‘children overboard scandal’ took place at this time. In the lead up to a federal election, when a boat carrying asylum seekers was intercepted nearing Australian waters, the Howard Government lied to the Australian people and said that asylum-seeker parents had thrown their children overboard (Briskman, Goddard & Latham, 2008). This, of course, caused a media flurry and outrage ensued as people tried to come to terms with how ‘those people’ could throw their children off a boat. Implying the depravity of those seeking asylum was a technique used by the Howard Government to show that they did not share ‘Australian values’ and justify their incarceration and exclusion from the country. Famously, Prime Minister Howard stated “we will decide who comes to this country and the circumstances under which they come” (Howard, 2001). Pauline Hanson’s right-wing *One Nation* party had also emerged a few years before this incident, and racism and xenophobia were rife.⁷⁹

It was little wonder then, that after the events of September 11, the fearful rhetoric struck a chord with an already divided community. Lebanese Australians describe being spat on and called terrorists in the days after September 11 (McDonald, 2014). People of Middle Eastern descent, Muslim and Christian alike, began having to defend themselves and their allegiance to Australia after countless headlines that conflated people of Middle Eastern appearance with criminals, terrorists and Islamic

⁷⁹ Many argued that this started with the Gulf War when many Australians of a Middle Eastern descent were asked to declare their allegiance to Australia. There is a famous incident where a man on Kerri-Anne Kennerly’s former morning television program was aggressively asked to clarify whether he was “Australian first” (as cited in McDonald, 2014).

extremists (McDonald, 2014). Young men in particular became disenfranchised and more like pariahs in their own country.

To make it worse, the passing of the counter-terrorism legislation disproportionately affected those from the Muslim community and the media was quick to bandy around the term radical Islamists (McDonald, 2014). This caused divisions and tensions, even within already diverse Muslim communities in Australia. The demonisation ramped up after the 2002 Bali bombings in a Kuta nightclub where nearly 100 Australians were killed. The media saw this as an attack on Australia itself, as many young Australians went for holidays to Bali. Given this background in Australia, it was little wonder that, when the first pictures of the men in Guantanamo Bay were released, there was little sympathy for their plight.

Examples reported in Australian papers

Capitalising on the fear after the 9/11 attacks, world leaders were quick to describe everyone who was detained by Coalition forces or government agents as terrorists, and evil. Prisoners were deprived of names and stories, and labelled as “detainees”, who were “dangerous” and “deadly” (Murdock, 2002). As the quote at the beginning of this section demonstrates, comparing those imprisoned and tortured human beings to dogs and other non-human animals occurred almost instantaneously (Dunn, 2003b; Lowther & Rosenberg, 2002). Pictures immediately surfaced that dehumanised prisoners and cast them as having lives unworthy of grief (Butler, 2010). Indeed, without having any allegations tested in a court, nor any means to prove their innocence, all prisoners were labelled by politicians, officials and the media as “committed killers”, “al-Qaeda fighters”, “terrorists”, “uniquely dangerous” and “traitors” (Johnston, 2002; “Prisoner may face trial here”, 2002; Schlink, 2002). Guantanamo prisoners were described as “some of the most dangerous men in the world” (“Access to P.O.W.’s eases concerns over conditions - War on Terror”, 2002), and Rumsfeld described



Figure 14- Pvt. Lynndie England holding a prisoner by a leash at Abu Ghraib
(Source: US Army, 2003)

them as “among the most dangerous, best trained, vicious killers on the face of the earth” (as cited in Stuart, 2003). Brigadier-General Rick Baccus who was reportedly in charge of prisoners declared “they’re all killers – they were all were carrying weapons against United States servicemen” (as cited in Stuart, 2003). John Walker Lindh, who was a high profile prisoner being a US citizen, was labelled the “American Taliban” and “Johnny Jihad” (“The view of the American Taliban's legal team: No way should he be treated like this”, 2002).

In Australia, David Hicks was immediately labelled an “al-Qaeda terrorist” or an “Aussie Terrorist” who was “prepared to kill innocent people” (Ahwan, 2002; Albrechtsen, 2002; “Prisoner may face trial here”, 2002a). It was claimed that he may have “been part of a conspiracy to kill thousands of Americans” (Hall, 2002). The Prime Minister, Foreign Minister and Attorney-General immediately told the Australian public that David was a terrorist despite the fact nothing was proven (Australian Broadcasting Corporation, 2002; 2003). One article described David as having “an obsession with guns and violence” and accused his “unstable background and drug abuse” as leaving no “moral barrier to fighting for causes including terrorism” (“Hicks faces up to legal ramifications”, 2002). One of the common and more deceptive labels that David received from the media over the years was that he was a “kangaroo skinner”, which inevitably conjured up images of a blood-thirsty killer who would even murder innocent iconic Australian animals for pleasure. It did not matter that it was not true. There was even a story that surfaced in the early years, which asserted that David was such a monster he tried to chew through the electrical wire to bring the plane down on transit to Guantanamo (Hicks, 2010).

The media capitalised on statements made by other prisoners under torture in an attempt to discredit David. Probably the most remarkable example peddled by the media was that of Feroz Abbasi who said a number of false things about prisoners, including that David was al-Qaeda’s golden boy, and that he wanted to go back to Australia to rob and kill Jews. In 2004 Abbasi released an explanation of the false statements including the effects of his torture and injections that:

- (i) caused a growth on my right testicle which I still possess to this day (my 25th birthday); (ii) paranoia; (iii) a disjointed female voice in my head; (iv) a

deterioration in my capacity to control my thoughts, feelings and actions – all of these became detached from myself and took on that of the disjointed female’s voice’s; (v) resulting in eventual “panic attacks” in which I literally thought I was being raped, repeatedly... (Abassi, 2004).

Three years after Abbasi released the statement explaining why he made the false accusations, the Australian media was still repeating his torture-induced claims in the newspapers (Balogh, 2007b).

There was also a strong message from the government and repeated in the media that if people detained by the US and its agents were tortured, they deserved it. The torture of one Guantanamo prisoner was described as “...getting a taste of his own medicine” (Coorey, 2003), and other articles pointed to the attitude that the “abuses” torture survivors experienced were “terrible, but what they have done is worse” (Devine, 2004). Newspaper articles repeated official claims that “mistreating” captives deemed to be Taliban members in Afghanistan was justifiable because they were responsible for torturing civilians (Dodd, 2008; “Top Taliban Official Killed”, 2002). Conveniently for comparison purposes, articles describing the torture of US POWs who served during the Gulf War, surfaced around this time, and were strong in condemning their treatment. Their treatment at the hands of the Iraqis was always described as torture and given the weight it deserved in the media. One article described: “Former Gulf war POW remembers his 15 days of torture at the hands of Iraqis. He was beaten daily – suffering a perforated ear drum, torn knee ligaments and severe bruising – and even endured several mock executions when a gun was put to his head and fired past his brow” (McKenna, 2003). Similarly, newspaper articles of the time also presented torture as unjustifiable when it was perpetrated by government agents in countries such as China and Russia (Hodge, 2011; Mirauda, 2002; McDonald, 2005). Torture at the hands of the Pakistani Inter Service Intelligence Agency (ISI) and other government agents was also presented as ‘legitimate’ in papers (Hodge, 2011; “Kids freed from school torture cell”, 2011).

In contrast, when War on Terror prisoners described very similar treatment, the headlines read “Terrorist torture claim” (Wockner, 2003), or “torture debate overlooks real villains” (Parkinson, 2005). The same phenomenon appears to have occurred in relation to Guantanamo prisoners from the UK, when articles from

Britain republished in Australian papers described their treatment as abuse rather than torture. Papers in Australia were more likely to use US Government language.

To further discredit and devalue the torture survivors or victims, words such as ‘alleged’, ‘abuse’ or ‘mistreatment’, were commonly used instead of torture, downplaying their lived experience. In relation to “mistreatment allegations”, one columnist noted the “US is also the victim of some fairly scurrilous myth-making... Likewise, the false and damaging story of a Koran supposedly flushed down a toilet at Gitmo” (Parkinson, 2005). Actually, these techniques and related ones were commonly used on prisoners to humiliate and break them according to prisoner testimony (Begg, 2007), US investigations, and testimony of former Guantanamo guards that they engaged in religiously insensitive behaviours and beat prisoners (Neely, 2011).

In addition to ‘myth-making’, torture allegations were even played-down to the extent that they were likened to fairy tales. A 2004 headline referred to an Australian prisoner’s torture experience as a “tale of abuse”, and there was a concerted effort to downplay the severity of the allegations throughout this article by labelling torture as “mistreatment” and “abuse” (“Pentagon probe into Hicks tale of abuse”, 2004).

Devaluation of Torture Claims

Devaluation was a central tool used by government officials and journalists to discredit allegations or assertions of torture made by people detained in the War on Terror. In 2002, when reports began surfacing that prisoners were being tortured, then Guantanamo Bay camp Commander stated “the more lurid allegations about torture and sensory deprivation are false...We're talking about some of the most dangerous men in the world, who have in the past displayed murderous and suicidal tendencies, and often together...” (as cited in "Access to P.O.W.'s eases concerns over conditions - War on Terror", 2002).

In Australia, Mamdouh Habib was one of the central targets of discrediting, and questions over the veracity of his experience persisted for years with headlines such as “Judge questions torture claims” (2008). When Mamdouh was released from Guantanamo Bay, he gave an interview detailing his torture to the Australian

television programme *60 Minutes*. After the interview, an article was released describing the interview that took place. The first line read, “speaking in a paid interview with Channel 9’s *Sixty Minutes*, Mr Habib said he was tortured with electric shocks, beatings and sexual humiliation involving dogs” (Harvey, 2005). The mentioning of the payment in the same line as his torture testimony served to discredit his testimony. Indeed, the fact that he received payment was again mentioned in the last line of the article, implying it had undermined his testimony: “Mr Habib is believed to have been paid \$200,000 for last night’s interview” (Harvey, 2005). Rather than focusing on the startling revelation that an Australian official allegedly watched Mamdouh’s torture in Pakistan, the journalist in the next line, instead focuses on his lack of response to questions about why he was in Afghanistan, and then adds that Mamdouh’s passport was cancelled because of ASIO concerns. Regardless of whether his passport was cancelled, or if he was a ‘person of interest’, his experience of torture should have been treated as legitimate.

This same experience was clear in the David Hicks case, however, his case was far more prominent and there are abundant examples of blatant discrediting. In 2004, when detailed information surfaced about David’s mistreatment and torture, then Prime Minister Howard stated “We do have to ... take those allegations with a grain of salt”, immediately calling into question his reliability (as cited in Larkin, 2004). In a 2007 article, purportedly about his torture, the journalist lambasts David as a terrorist, mentions his so-called ‘admissions’ and disregards the fact that statements made in Guantanamo were unreliable as a result of his years of torture (Neighbour, 2007). Articles commonly detailed his ‘admissions’, ‘confessions’, or alleged actions and associations before briefly mentioning his treatment (Dunn, 2007). For example, a 2007 article presents the common narrative about David when one commentator details his view of David’s personal character and alleged actions. Finally, at the end of the article, almost as an aside, he notes “None of this means he deserves the treatment he’s been subjected to since he was captured in Afghanistan in late 2001 and taken to Guantanamo Bay. Even ratbags are entitled to justice” (Hyland, 2007).

Whilst David was in custody he was unable to correct the record and journalists such as the ABC’s Leigh Sales took liberties to print misinformation purporting to be his story (Sales, 2007b). Sales told a Sydney Institute audience that she wrote her book,

Detainee 002 about David to dispel the “myth” that “Hicks was tortured at Guantanamo Bay” (Sales, 2007a). She said that “Interrogators at Guantanamo Bay never had to use any harsh techniques on Hicks because he sang like a canary from the first day he was captured” (Sales, 2007a). “He never faced some of the questionable techniques which have caused the Bush Administration so much grief – the dogs, the strobe lights, the sleep deprivation, the loud music and so on”, further she says that “other prisoners at Guantanamo did” experience those techniques, “but Hicks didn’t” (Sales, 2007b). Of course, Sales does not clarify that her sources for her apparently authoritative assertions were US and Australian Government officials. In fact, one of David’s civilian lawyers, Joshua Dratel wrote a letter to Sales in 2007 before the book was released and stated:

It would be unfortunate if your book adopted a negative slant, and accepted unconfirmed claims by persons with agendas that do not reflect the facts, because David and his lawyers have declined to cooperate with you in assembling your book. There are a multitude of prudent legal and other reasons why David is correct in choosing this path... (Dratel, 2007, p. 1).

The fact that Sales uncritically used US and Australian Government sources was reflected in the language she used. For example, she states that David had been “roughed up” but not tortured, which correlates with the white-washed US Government NCIS report that also used the language that he was “roughed up” (NCIS, 2005; Sales, 2007b). The book and her articles therefore misrepresented and minimised David’s treatment, spread false information, and denigrated his personal character; in effect, Sales was the virtual mouthpiece of both the US and Australian Governments at the time. Sales went as far as to say that Australian officials worked tirelessly to bring David home (Sales, 2007c). Sales has never spoken with David; her book was rushed to the press just prior to his release.

Even when information came to light about the torture of people held in Guantanamo Bay, there was a clear disjuncture between what was being reported and its application to David. For example, in 2007, a report outlining the torture of prisoners in Gitmo was released. It included a detailed list of some of the techniques prisoners were subjected to, including; “chaining detainees for long periods, insulting the Koran, using dogs to intimidate detainees and employing sexual intimidation...”

("FBI reveals Cuba camp abuses", 2007). Despite these revelations of "camp abuses", one headline in Australia read "FBI report outlines torture of prisoners in Gitmo – No link to Hicks" (2007). The idea that *all* prisoners in Guantanamo were subjected to "abuses" except for David is odd to say the least.

There were also commentators that wrote as if any allegations made by David against his captors were lies. In 2007, a columnist from *The Australian* stated, "Hicks's robust physical and mental condition when he appeared before the military tribunal last week, and the news that he has been able to study mathematics while in detention, gives the lie to the allegations of abuse levelled against his captors" ("Plea bargain is less than perfect justice", 2007). The columnist obediently reported US Government statements that David was being treated humanely, and effectively got off lightly after a plea deal was signed. Indeed, anyone who felt concern or compassion for David's "supposed mistreatment" was told their compassion was "misguided" and focusing on "his plight further narrowed and corrupted our moral thinking" because, the columnist states, "Hicks" supported the "most heinous terrorists on Earth" (Bagaric, 2007).

Inevitably, by the time David was released, the media narrative had already been set by the US and Australian Governments, and they certainly were not going to admit they made a mistake, particularly about his torture. So, David was commonly referred to as being "caught on the battlefield", a member of al-Qaeda or the Taliban, or that he fought against US and Australian troops, none of which were correct. In addition, the media regularly called David a "convicted" or "confessed" terrorism supporter, which, even if the US Military Commissions system was regarded as legitimate, is an incorrect and misleading assertion, given that David pleaded "Alford" in which he made no admissions to his guilt or actions.

The same misreporting extended to the imagery the media used when reporting on David. The Australian public was bombarded with an image of David holding an unloaded rocket propelled grenade launcher. The media would often report that he was photographed fighting with al-Qaeda, referencing the well-used photograph. What they did not report, partly because most reporters had not bothered to check, was that the photo was actually taken in Albania with a few of his friends, certainly not on any battlefield, let alone in Afghanistan. The photo commonly used in the

media stories was also cropped to cut out the other people in the photo, most notably, the one wearing slippers. Instead, the photo was used as a tool to taint people's perceptions of David and manipulate his story to suit their own agendas.

The discrediting became worse for David when he tried to correct the record a few years after his release from Guantanamo, first with his book, and then a media interview. Even before the book was released commentators were already questioning whether the public should even read the book and hear "the self-serving excuses that spill from the lips of a man that is so full of hate and a lust for bloody warfare and mass murder that he went in search for it?" ("At long last he will be free to tell his story, but should we listen?", 2007). Others questioned the reliability of David's account (Banham, 2010), even though they had not read it yet. These journalists who presented themselves as "authoritative" sources were not in Afghanistan or Guantanamo Bay with him, but still presented themselves to the public as if they had inside knowledge or were more expert on his life and experience than he was.

When David's book was eventually released, and after years of misreporting and hyperbole, rather than admit where they had made errors, many media outlets, officials and journalists instigated an all-out attack on David's credibility, and in the process, devalued his experience of torture. Headlines of articles by people who had supported David's return to Australia had words like "delusion" scattered through them (Loewenstein, 2010), and one headline even went to the extent of saying "He can't handle the truth" (Neighbour, 2010). One particularly discrediting article by Sally Neighbour from the ABC, said that David's personal account was "not frank" and one of "wilful blindness", "deceptive", "self-serving, sanitised and disingenuous" (Neighbour, 2010). Neighbour protested that David had not spoken to any journalists and chose instead to write the story himself "thereby avoiding the discomfort of having his version of events questioned" (Neighbour, 2010). His PTSD as a result of his torture was never mentioned as a reason as to why he would not want to be interrogated by a hostile journalist. The conclusion of the Neighbour (2010) article then provides a timeline littered with inaccuracies and, in what can only be described as deliberate ploy to further discredit David's testimony, accuses

him of being expelled from school, a petty criminal and, of course, the well-used kangaroo skinner misnomer.

But even when David participated in interviews, he was largely met with the same treatment.⁸⁰ ABC's *Australian Story* (Grasswill, 2011) program was a perfect example of the level of collusion between government and media, and the lengths they went to discredit David's torture testimony. At the beginning of filming, producer Helen Grasswill swore to David that his torture would be core to the story, because David said, "I wanted the public to know what really happened to me so that it doesn't happen to someone else" (personal communication, 13 November, 2010). Things turned sour, however, when a whistleblower within the ABC called David and told him that the script had been changed after an Australian Government official put pressure on the ABC to treat David harshly because of a two page spread in *The Australian* newspaper complaining about taxpayer money going into the program. Obediently, Grasswill's script was changed and despite David's serious PTSD taking a turn for the worse at the time, the ABC went ahead with the program. They even changed the usual *Australian Story* format of the individual telling their own story to have Grasswill read her version of events over David during the program, giving the impression that he consented to the presentation of his story. What the public did not know was that David was suicidal at the time of filming, and Grasswill had spent weeks interviewing him, sometimes from the morning until late evening, under extremely stressful conditions and whilst David was in a deep depression. It was no wonder then, that after a full-days' worth of questioning and given the lights shining in his eyes, which were triggering his PTSD, David faltered on answering some questions and had to take a number of breaks. Throughout the numerous interviews with David, Grasswill would ask leading questions several different ways because David was not giving the answers she wanted to fit in with her script.

The result was a disaster for David. David's family and friends called the ABC stating they wanted to be removed from the program prior to it going to air and David withdrew his support. Even after high-level meetings, the head of News and

⁸⁰ David's first television interview was with a program called *The Project*, which aired on Channel 10. They gave his torture testimony the weight it deserved.

Current Affairs refused to pull the program, even though there were serious concerns that David was at the point of suicide. The program contained a number of gross omissions and distortions, especially around David's time in Afghanistan. Grasswill refused to include material that would have rebutted the government's assertion he attended terrorist training camps, because she said at the time "it would open a can of worms" (personal communication, 2 July, 2011). The editing of the program made it look like David said things that he did not and was refusing to answer questions that he had answered several times before. One particular scene had David asking to look at his book to refresh his memory of an event that took place over ten years prior; this was after a full day of questioning with lights shining in his eyes and the re-triggering of his PTSD, yet they aired this scene which served to discredit his testimony. After Grasswill had told David that the program will only spend about ten minutes pre-Guantanamo, it ended up taking up around 45 minutes of the hour long program, giving the impression that his alleged actions pre-Guantanamo were more important than the serious crimes against humanity committed against him. Grasswill and the ABC also organised for US and Australian Government insiders to be part of the program, which only served to further discredit his torture and denigrate him personally, including inviting Leigh Sales to give her point of view. Rather than the program being a forum for David to tell his story as the title suggests, *Australian Story* instead became a forum for officials to push pro-torture agendas and gave more voice to the official government narrative around David's case, which served to dampen outrage at the injustice of torture he was subjected to.

To make matters worse, after the program went to air, the Australian Government tried to use the interview that was aired as evidence in a 'proceeds of crime' case against David. When David's legal team tried to subpoena the transcripts, the ABC fought to have them kept from the public; one can only imagine it was to protect themselves from the fact they aired misleading interview material due to the heavy editing. The transcripts have never been released to the public. After filming had finished David commented:

All Helen could do was tell me she wanted a Walkely [journalism award] for the story and that she thought she was qualified to write a book about me. She couldn't care less whether I was breaking down and having flashbacks;

she didn't care I was tortured, she just wanted to rewrite my story to back-up her mates at the ABC. I was just lied to and used and then they [the ABC] lied to the public and said it was my story. I was just used for her own gain (personal communication, 1 August, 2011).

After the interview was aired, the newspaper commentary was scathing of David because of the way it was edited and questions about the veracity of his torture were immediately aired. One article in *The Australian* headed with "Close the book on Hicks tall tales of victimhood" and asserted that his "ordeal" was of his "own making" (Kenny, 2011). Chris Kenny, who worked for Alexander Downer at the time David was imprisoned, concludes the article by stating that Hicks should get on with his life and "allow us to commemorate the *real victims* [emphasis added] of the war on terrorism" (Kenny, 2011). Even Cynthia Banham, known for her more liberal views, printed a story that called into question the veracity of David's testimony due to the part of the interview where he had to refer to his book (Banham, 2011). Journalists should be aware that PTSD, as a result of torture, can be triggered by bright lights and hostile questioning, and that the condition causes cognitive impairment, particularly problems with memory. Instead, without doing a fact-check, Banham further discredited David by asserting that "Hicks was lucky" not to be tortured like other Guantanamo prisoners (Banham, 2011).⁸¹

The devaluation of David occurred even with the release of the WikiLeaks Guantanamo files in 2011. Whilst many media articles pointed to the fact that much of the contents about Guantanamo prisoners was inaccurate, when it came to David, they were quick to quote from the US military files notes that called him "deceptive", even though the media organisations were provided with a 16 point media release that demonstrated the numerous errors in his file (Keene, 2011).

Disturbingly, the collusion between the Australian, UK and US Government to denigrate David and his treatment became even more apparent when David attempted to gain British citizenship in an attempt to seek release from Guantanamo Bay. FOI documents revealed that the US embassy in London sent a cable to

⁸¹ I questioned Banham about this article at a human rights conference she presented at a few years later. To her credit she apologised for the distress she caused David and for not knowing the story behind the interview. She did not, however, publicly correct the record.

Australia on 1 March 2007 asking for information to refute David's allegations of torture and to "provide a broader portrait of Hicks as a danger to society" (DFAT, 2007). David was granted British citizenship, however, it was revoked on the same day by the British Government. The use of the denigration tactic was utilised by all three governments in a systematic effort to stifle any outrage about David's treatment and to unashamedly shift attention onto their portrait of him as a terrorist and a danger to society.

Joseph Thomas had a similar experience when it came to his torture being reported in the Australian media. The results demonstrate that the focus of media articles related to what he was accused of doing, rather than his rendition to and torture in CIA black sties. Even after Joseph was cleared of terrorism related charges, journalists still referred to him as "Jihad Jack" (Price, 2006), and even a "freed accused terrorist" (Bachelard, 2006; Munro, 2006). His torture was reinterpreted by one article as him only being "threatened with torture" (Allard, 2006), and they ignored the asphyxiations and well-known psychological torture he experienced. The same article explained his detention and questioning as if it was conducted in a routine domestic law enforcement forum; the paper quotes: "He was detained and questioned by Americans and by Pakistanis before being visited by an Australian consular official on January 22, 2003. Thereafter he was interviewed by Australian and Pakistani officials and returned to Australia on June 6, 2003" (Allard, 2006). There was no mention of the horrific and inhumane conditions under which he was held, his torture, or the fact he was disappeared.

Even when the media did mention Joseph's torture, it was minimised. For example, an article in the *Daily Telegraph* claimed that people critical of Bush's torture policy were actually protesting actions by interrogators that were not actually torture. Miranda Devine (2006) stated "Bush declared the US does not use torture to extract information from terrorists, a topic preoccupying Guardianistas, who deem torture to be when an interrogator showed Jihad Jack Thomas a letter from his wife. Diddums!" The journalist then laments that the CIA torture program is under threat because of a court decision outlawing "outrages on personal dignity" (Devine, 2006). The implication is that Joseph's torture was not 'real' torture, and the only thing that

ever happened to him was that letters were read to him, and Bush and the CIA are the victims in the War on Terror because they cannot do their jobs.

Another 2006 article gave the impression that the public needed to be protected from Joseph and that despite being cleared of terrorism charges, he still posed a threat to the community ("Thomas's liberty curtailed so we can sleep at night", 2006). The denigration and devaluation of Joseph was either blatant or more covert. A more overt example of denigration was when one paper quoted a Liberal party nominee saying "I have no sympathy for Thomas at all. Isn't (it) time we brought in the death sentence...They are not true Australian's [sic]...It's time to take their lives before they take ours. Together we can get rid of these arseholes" (Bachelard, 2006). Even after a court found that Joseph's so-called confessions were made as a result of 'coercion', newspapers still claimed the line that "it's difficult to feel much sympathy for Thomas" (Price, 2006). One commentator even suggested that Joseph was lucky that the AFP were protecting his rights when he was being tortured in Pakistan by the CIA (Sheridan, 2006).

Ironically, the whole reason Joseph ended up in court the second time was because he was talked into doing an interview with an *ABC 4 Corners* journalist who Joseph said, told him it was his opportunity to "correct the record" (personal communication, 28 November, 2014). Joseph was horrified when the program went to air. Despite the journalist bringing her son around to play with Joseph's children, and promises that the public would finally have the truth, the story presented a "skewed" version of events and discredited his torture (personal communication, 28 November, 2014). In a personal communication, Joseph said he felt the ABC journalist, Sally Neighbour, was "exploitative and manipulative" in her reporting of his torture and that the public is still unaware of the complete situation he went through overseas (personal communication, 28 November, 2014).

Much of the coverage of Joseph's case was either dismissive of the torture he sustained at the hands of government agents, or simply did not mention it to begin with. Instead the focus was on Joseph's alleged activities and associations, and denigrating his personal character. Even those in academic circles mainly focused on the legality of the charges and case and minimal attention was placed on his torture,

or the serious questions around the Australian Government's knowledge and involvement in his treatment overseas.

Other people were also targeted by the Australian newspapers. Hany Taha is a Victorian man who was charged with terrorism related offences in 2005. Despite Taha being cleared and released back into the community, he was still subjected to devaluation techniques by the authorities and media. When Taha began legal proceedings to protest his treatment whilst in custody, the Australian media was quick to devalue his claims. One headline in the *Herald Sun* read "Terror trial 'suffering': Cleared suspect seeks compo" (Hadfield, 2011). Calling Taha a "cleared suspect" was clearly a negative framing designed to remove the focus off his treatment. Placing the word "suffering" in quotation marks also appears to be an attempt to call into question the veracity of his claims. When describing his treatment, the paper stated "Hany Taha, 36, wants the State Government to pay for the pain and suffering he says he has endured as a result of his time in custody. He says he was ill-treated, abused and assaulted on remand from November 2005 to September 2008, and suffered psychiatric injury" (Hadfield, 2011).

Whilst placing the emphasis on his treatment merely being an allegation, the paper failed to mention that the detention of people on remand for terrorism related charges had been raised as an issue in a UN Committee against Torture report into Australia's human rights obligations in 2008 (UN Committee against Torture, 2008a), and the numerous human rights and ombudsmen reports that called into question the conditions of detention and treatment of prisoners in Australia (Brown, 2008; Human Rights Law Resource Centre, National Association of Community Legal Centres, & New South Wales Council for Civil Liberties, 2007). Indeed, the treatment of people held on remand had been raised on another occasion in 2007 when a Victorian Supreme Court judge announced that thirteen men could be released on bail after their legal team notified the Court of their treatment in custody, which included being left in an unventilated vehicle and another prisoner being grabbed so hard by prison guards he was bruised (Munro, 2007). These allegations are in line with issues raised in the Committee against Torture report, however, they were not reported in the article.

The failure to ‘connect the dots’ was a common theme in the reporting of the Australian media, particularly when it came to evidence of torture being released in the US. Many journalists failed to connect events which occurred in the US with former Australian captives who had been held in overseas custody. Whilst the Australian media was focusing on the accusations levelled against the prisoners and in the process downplaying concern about their torture, the vast amount of material that substantiated many of their experiences of torture was not reported. For example, when a Council of Europe report was released into CIA prisons, the Australian papers barely mentioned it, let alone made connections with the former Australian CIA prisoners (Spolar, 2007). There were of course some notable exceptions, such as articles by Natalie O’Brien who exposed many torture revelations in relation to the Mamdouh Habib and David Hicks cases (O’Brien, 2008b).

Whilst the former Australian prisoners appear to receive the harshest and most comprehensive coverage compared to prisoners from other countries, the results of the media analysis show that international prisoners of the War on Terror were also subjected to devaluation by the Australian media. It must be said however, that most of the articles about other prisoners were written by US staff and simply reprinted in Australian papers. Regardless, it is clear that the devaluation of the prisoners and their torture took place in an extended and comprehensive manner.

The media analysis demonstrates that the Australian media took the US official line of referring to Guantanamo prisoners as terrorists and even tried to excuse their torture by claiming that they are “not normal felons” (Rabkin, 2007). This is particularly the case with those referred to by the US Government and media as ‘high value detainees’. The reporting of Khalid Sheikh Mohammed’s charges and ‘trial’ have spanned the decade of results, even though he has never been brought to a regularly constituted court. Although he has never been convicted of anything, Mohammed is commonly referred to in the media as a “confessed master terrorist” (Toohey, 2011), or “Terror Master” (Munro, Allard, & Jackson, 2007). Many of the articles refer to his “confessions”, even though they know these admissions have been made under torture, and after he was waterboarded (Munro et al., 2007).

Further, it is still unclear whether Mohammed made these claims as a result of serious mental health problems, as other prisoners have been known to do.

Other Guantanamo prisoners have also been given the terrorist “mastermind” label, even when describing their torture in detail and before being convicted of any crime (“US seeks death penalty for 'mastermind' behind bombing of navy ship”, 2008). Abu Zubaydah, who was also tortured in CIA black sites, was commonly described as a “top terror suspect” in media articles, even in articles describing his torture (Mannion, 2007). Zubaydah was waterboarded more than 80 times, even though the US Government later admitted that they were wrong in their assessment of him as a top al-Qaeda operative. There is a clear intimation that if someone is accused of terrorism, they are not entitled to be treated like everyone else, they are different or ‘master’ terrorists.

Former Guantanamo child prisoner, Omar Khadr, was also discredited in the Australian media. One particularly devaluing headline read “Kill me, terror boy begs interrogators” (Noronha, 2008). The article revealed that he was subjected to sleep deprivation and was crying for his mother when he was being interrogated by US agents. Calling Khadr ‘terror boy’, not only devalued his personal character, but also his experience of torture in Guantanamo Bay. Khadr was a teenager when first detained, and there are serious questions around his treatment whilst in US custody given that evidence was destroyed in his case (Edney, 2013), and if detained as a POW in normal circumstances, he would be rehabilitated as a child soldier, rather than punished (Duffy, 2005, p. 383).⁸²



Figure 15- Omar Khadr crying and pulling his hair during an interrogation at Guantanamo Bay (Source: JTF GITMO, 2003)

⁸² Under international law, children (under 18 years of age) are granted special protection. Camp Iguana was a special camp established in Guantanamo to hold children (Duffy, 2005; Hicks, 2010).

Devaluing torture by promoting certain narratives

Comparatively, and in a typical case of manipulating the narrative, the tables were turned when it came to holding to account those who carried out torture. A primary example was when it became known to the media that a former US army reservist, who was allegedly involved in the torture of prisoners in Iraq was living in Australia. Instead of focusing on the accusations against the man, the former interrogation contractor for CACI was described as a “patriot” who was accused of “terrorist torture” (O'Brien, 2004). The veracity of the claim that prisoners who were tortured by CACI in Iraq were all terrorists was never called into question. Instead, he was presented as just doing his job, despite the allegations against those described as terrorists never being tested in a court.

Indeed, there are many examples where the narrative has been switched to make the perpetrators victims. In 2007, the *Sunday Mail* ran an article quoting Alexander Downer as saying he “did not appreciate being abused and denigrated” by those who were campaigning for David Hicks’ release from Guantanamo Bay (as cited in Balogh, 2007a). Downer, by describing his treatment as being abusive and denigrating whilst, at the same time, defending the appalling treatment of an Australian citizen in Guantanamo Bay, sought to shift the narrative and, in the process, trivialise torture.

A similar situation occurred when it was revealed that members of the Australian military serving in Afghanistan were detaining captives in dog cages (“The dog pens used for Taliban”, 2008). An ADF spokesperson said that people were held for 15 hours in enclosures that were previously used to house dogs. The steel cages were 1.4 meters high and only 1.2 meters wide and deep. In response to the complaints by the prisoners, then opposition Defence Minister Nick Minchin stated that it was “un-Australian” to complain about the way that Australian troops treated prisoners. He commented, “It's pretty outrageous for any Australian to complain about the behaviour of Australian troops in relation to these Taliban extremists who not only treat other troops but their own people with such degradation, cruelty and appalling procedures... in this case, I think Australians should give our troops a bit of slack” (as cited in AAP, 2008, p. 1). The treatment by the Australian soldiers was therefore

untouchable, and the focus was placed on the personal character of those detained. It was never proven that the men that were placed in the cages were Taliban forces either. The message was: the troops are the victims here.

There was a resurgence of pro-torture articles around the time of each 9/11 anniversary. Newspapers published articles written by 9/11 victims' families who were angry that anyone would have sympathy for those tortured in US custody. For example, in 2006, *The Australian* published a particularly vicious attack on David Hicks and Joseph Thomas with the author stating that he was angry with "do-gooders" who are defending their right to a fair trial and to be free from torture (Rintoul, 2006). What the paper did not point out was that neither Joseph, nor David had anything to do with the tragic death of his family member. But the implication saw readers ultimately conflating the two as being mutually exclusive.

The same narrative re-occurred around the time of Osama Bin Laden's assassination in 2011, which also coincided with the ten year anniversary of 9/11. The Australian media was quick to jump on the torture bandwagon, and published US Government assertions that it was torture that led to the assassination of Bin Laden and that torture made the public safer. An article in the *Daily Telegraph* cited Donald Rumsfeld describing "intensive interrogation" techniques as leading the US to Bin Laden's courier, and that before the techniques were employed the "9/11 mastermind...wouldn't talk about future attacks" (as cited in Devine, 2011). Devine states "with the luxury of hindsight, the techniques were condemned as torture" but that after the particular prisoner was subjected to these "interrogations", he was "very helpful" (Devine, 2011). Cheney was also quite vocal around this time in calling for "harsh interrogation methods" to be reinstated, and advocated for waterboarding to be authorised by the Obama Administration ("Cheney: Bring back waterboarding", 2011).

That same year, Bush's former speech writer, Marc Theissen, was sent to Australia to ask Australian public to lobby the Obama Administration to reintroduce 'enhanced interrogation'. Theissen's central message to Australians was that torturing "terrorists" worked and could save lives (Theissen, 2011). None of the so-

called terrorists he referred to had faced trial and been proven to have involvement in terrorism.⁸³

Australian newspaper articles reveal that devaluation was one of the key methods used by those in authority to inhibit outrage: US and Australian officials, and the media, engaged in a campaign to lower people's view of the victim/survivor or group of people. From the beginning, derogatory labels were applied to individuals detained in the War on Terror, including calling them terrorists, killers and dangerous. Personal attacks on torture survivors were voluminous over the ten year period. Many of the examples outlined above demonstrate the way that an individual was personally attacked, and that many journalists simply relied on official sources, never actually speaking to the individuals themselves. Finding and creating dirt was also significant, particularly in the case of the Australian torture victims.

Reinterpretation of Events

For in the world in which we live it is no longer merely a question of the decay of collective memory and declining consciousness of the past, but of the aggressive [assault on] whatever memory remains, the deliberate distortion of the historical record, the invention of mythological pasts in the service of the powers of darkness – Yosef Hayim Yerushalmi (1989, p. 105).

This section outlines evidence of the reinterpretation of events from the data analysis. The reinterpretation of events as a tactic of minimising outrage can take many forms including that some of the facts may be accepted, but they are reinterpreted to mean something entirely different. Martin (2012) notes that it could be a perpetrator denying the act occurred, denying knowledge of the act, denying the act meant what others thought it did, or denying the intention to cause the act. This includes lies about the event or actions of certain officials, minimising consequences, passing the blame or framing the event in a particular way.

The reinterpretation of events by governments and media that surround torture in the War on Terror has been ubiquitous over the ten year period studied. Given the

⁸³ When I confronted Theissen at the Festival for Dangerous Ideas in Sydney about whether he would find it acceptable for his own children to be subjected to these so called “enhanced interrogation techniques” if they were captured by ‘the enemy’, he obfuscated, and would not answer the question.

overlap in the tactics used by officials, many examples have already been provided in the sections on cover-up and devaluation, such as the denial that torture occurred and the passing of blame to lower level soldiers. There is clear evidence of what can only be described as the state's deliberate attempt to discredit what the survivors say, and manipulate the truth, with the support of a mostly compliant media. The manipulation is extreme when it comes to Guantanamo. It is important to remember that the traditional purpose of holding combatants during war is to prevent them from taking part in hostilities – it is not a crime to participate in conflict under the GCs. However, as already discussed, Guantanamo bypassed many international law protections, particularly prohibitions against torture, and other cruel, inhuman or degrading treatment.

There are many examples where military spokespeople reframed the narrative in order to present a different view of the reality of the prison. For example, it is widely known that most of the prisoners have been kept in solitary confinement for years, including being locked in a concrete cell for 23-24 hours a day, for months or years at a time (Rodriguez, 2011). However, rather than describing solitary for what it is, the US military, and Government officials use the term “single celled occupancy” (Baker, 2006). The sad reality is that solitary confinement is one of the most destructive forms of torture that has extremely deleterious consequences to the integrity of the person emotionally and psychologically (Rodriguez, 2011).

To protest their indefinite detention, and the years of torture, a core group of men at Guantanamo have engaged in a long-term hunger strike. The US policy is not to call them hunger-strikers, but instead characterise their refusal to eat as “non-religious fasting” (Leopold, 2014a, p. 1). The Standard Operating Procedure documents in Gitmo completely changed the terminology, removing any reference to hunger striking, instead naming it “Medical Management of Detainees with Weight Loss” (Leopold, 2014a). In addition, the US military decided not to publicly divulge the numbers of men on hunger strikes because “the prisoners had become too successful in attracting attention to their cause” (Leopold, 2014a, p. 2).

Despite US Government statements and many reports in the mainstream media, such as *The Australian*, Guantanamo prisoners are treated even more harshly than those who are detained at the Hague whilst undergoing trial at the International Criminal

Court (ICC) (Schulberg, 2014a). The Hague is the detention centre for the ICC where those accused of war crimes are held for trial. In 2014, the ICC held former Serbian President, Slobodan Milosevic, and Bosco Ntaganda, from the Democratic Republic of Congo. Milosevic died prior to the completion of the trial; however, if Ntaganda is found guilty, he will be transferred to a prison, as the Hague detention centre is not intended as punishment. Comparatively speaking, the Hague treats those suspected of criminal activity as they should do; as ‘detainees’ who are able to move about the complex freely by day, with access to tennis courts, kitchen, library and a computer lab. They have a computer in their cells, are able to make phone calls, attend religious prayers, write letters, see family members, and are even allowed conjugal visits.⁸⁴ In the Hague, people can see and talk to their lawyers without the risk of being filmed or recorded. They are not there as punishment as they have not been convicted of a crime.

For Guantanamo prisoners, the situation is very different, particularly those held in Camp 7 (Schulberg, 2007). Prisoners are kept in solitary confinement where they have no access to the outside world, except for the contact with guards, and visits from lawyers. They are refused permission to pray communally. When they leave their cells to see lawyers or the ICRC, they are subjected to invasive strip-searches. They are recorded when seeing their lawyers; there are no private communications. They have no access to computers, or communal facilities. They are unable to see their families, now for over a decade and a half. The letters that they do receive are read and redacted by the US military – words such as love or other encouragement are removed in order to foster a sense of futility and hopelessness. Apart from these conditions, there are ongoing issues of interrogations, and ongoing hunger strikes (ICRC, 2007).

Despite this, articles studied demonstrate that Guantanamo was largely described as a ‘normal prison’ where standard interrogation processes were enacted to seek out actionable intelligence. This was widespread over the ten years of articles, and even the more ‘reliable’ sources were likely to repeat the US Administration’s claims that inmates were being treated humanely and in accordance with the GCs, rather than examine the conditions under which information was being obtained.

⁸⁴ Liberian warlord Charles Taylor fathered a child whilst on trial for war crimes.

Outside of Guantanamo, there is evidence that points to political leaders and the media distorting and inflaming the threat of terrorism in the general community in a disproportionate way, and this has served to exaggerate the threat posed from Guantanamo prisoners. After the criminal acts of 9/11, the Howard Government released a terrorism public threat alert system, which was purportedly aimed at providing the public a way of ascertaining the level of threat faced by the community. This was closely based on the Bush Administration's colour-coded threat alerts system. The Australian Government's "National Public Alert System" was set at medium for over a decade, reporting that a "terrorist attack could occur" at any time (Australian Government, 2014a). During the period when the Howard Government was trying to pass the national security legislation in 2002, fridge magnets, an advertising campaign and public bill boards were also rolled out under the banner of "be alert but not alarmed". One national security safety brochure encouraged the public to remain vigilant and suspicious of "unusual videotaping or photography...suspicious vehicles near significant buildings or in public places...suspicious accommodation needs...[or] unusual purchases of chemicals [such as] beauty products" (Australian Government, 2014d, p. 2). The intended impact was clearly a heightened sense of fear in the Australian community. The political reaction was disproportionate and concerning. This has more recently been used by the Abbott and Turnbull Government's which coincidentally have tried to pass draconian counter-terrorism legislation including mass data retention and expanded the definition of terrorism.

There is also evidence that law enforcement agencies have been involved in creating a terrorist threat by preying on vulnerable members of the community. One Human Rights Watch (HRW) report demonstrated the way in which the FBI was targeting those of Muslim faith and in their undercover operations, creating terrorists by "suggesting the idea of taking terrorist action or encouraging the target to act" (Gillan, 2014, para. 1). The report outlines several cases where the FBI has either encouraged, pressured or even paid people to engage in terrorism related activity, and most disconcertingly, targeted people with intellectual disabilities (Human Rights Watch, 2014a). For example, in the case of the "Newburgh Four", the government "came up with the crime, provided the means, and removed the relevant

obstacles, and had in the process, made a terrorist out of a man whose buffoonery is positively Shakespearean in scope” (Human Rights Watch, 2014a, p. 1).

The case of Rezwan Ferdaus was also particularly troubling. Even though the FBI told Mr Ferdaus’ father that he “obviously” had mental health problems, they targeted him in a sting operation (Human Rights Watch, 2014a, p. 1). His health deteriorated significantly whilst the “fake plot” was unfolding, his psychological health worsened, he lost bladder control to the point where he had to wear adult nappies and he suffered seizures (Human Rights Watch, 2014a, p. 1). He was eventually charged with material support for terrorism, and sentenced to 17 years in prison (Human Rights Watch, 2014a, p. 1). HRW points out that “individuals who perhaps would never have participated in a terrorist act on their own initiative and might not even have the capacity to do so, were prosecuted for serious, yet government-created terrorism plots” (Human Rights Watch, 2014a, p. 1). The US Government even went as far as to claim that those innocent of terrorism offences that are caught up in prosecution are “collateral damage”. For example, in 2005 a spokesperson was quoted as stating “That innocent people get caught up in the prosecution of a terrorist cell, well, in war there is always collateral damage” (Bruni, 2005).

Overall, the events of 9/11 were interpreted by US officials and newspapers as the worst attacks to occur in history, and newspapers often labelled it as the day that changed the world (Jackson, 2002; Norington, 2011). Although comparatively, the response initiated by the US Government has resulted in an immeasurably higher number of casualties, the murder of people on 9/11 was used as a political tool to capitalise on fear. This occurred to the extent that any comparisons made were seen as offensive and even treacherous. For example, when a short film was released depicting Chile’s 9/11, which saw a coup d’état ushered in by the Nixon Administration, which included the widespread and systematic use of torture, there was outrage that it was compared to the US 9/11 (Zwar, 2002). This reinterpretation was used in an attempt to stifle any comparisons.

Reinterpretation of Torture

The US Government regularly stated, and Australian media habitually reported, that the US does not torture. Torture was reinterpreted as only amounting to physical techniques, such as severe beatings and whipping. In 2002, Brigadier General Mike Lehnert stated "...there is no torture, whips, there are no bright lights, drugging. We are a nation of laws" (as cited in "US defends procedures at Camp X-Ray", 2002). Instead, the US claimed it carried out "enhanced interrogation", "stress and duress", "harsh interrogation" or "tough-tactics" (Coorey, 2003; Lowther, 2006; Phillips, 2003a). The *Daily Telegraph* even called interrogation "quizzing" ("US admits quizzing injured detainees - War on Terror: Patriot games", 2002). Torture was commonly referred to as "mistreatment" or "abuse". In relation to the capture of one prisoner, a US Senator told an Intelligence Committee "We don't sanction torture, but there are psychological and other ways that we can get most of what we need" (as cited in Coorey, 2003). One story quoted a US official stating that Khalid Sheikh Mohammed is "...experiencing...the most persuasive interrogation techniques legally available to the Central Intelligence Agency. Former American military interrogators say Mohammed won't be subjected to overt torture, but he is likely to face acute psychological pressure and low-level violence" (Patrick, 2003). Another report said that Mohammed would not be subjected to "traditional torture" but that the "US will have drugs and procedures" that will make the prisoner talk (Corbett, 2003). However, one journalist labelled the approach as "soft torture" (Phillips, 2003b), and another as "torture-lite" ("Basic justice is under duress", 2006). Indeed, papers commonly quoted officials and academics that downplayed the torture of Mohammed who is still detained in Guantanamo as of September 2016. A 2003 article quoted Dr Wright-Neville as saying that brutal physical torture was "unlikely", and that instead "investigators would seek to twist Mohammed's mind into shedding its secrets, rather than beating it out of him"; instead they will use sleep and sensory deprivation and cold temperatures, which the article purported were not torture (as cited in Phillips, 2003a). The paper quoted "experts" as stating that "interrogation was likely to stop just short of outright torture" (Phillips, 2003b). One article stated that techniques experienced by Mohammed were only "akin" to torture, and others pointed to the fact that all prisoners were provided with "ample

food, water, heating and a bed”, and therefore they were not being tortured (“Basic justice is under duress”, 2006; Johnston, 2002). Many articles were unquestioning of these statements from the US Government and its agents, particularly in relation to the treatment of individual prisoners.

In the early years after 9/11, the Bush Administration stated that prisoners were being treated in the “spirit” of the GCs, or “consistent” with them, “for the most part”, whilst at the same time stating that prisoners were being treated humanely (Gardiner, 2002). One of the earliest examples of this misrepresentation was just after photos of shackled Guantanamo prisoners were released to the world. Amongst other measures, the boys and men transported to Guantanamo were blindfolded and had mitts placed on their hands. US military officials stated that this was because “it gets pretty cold on a C-141, hence the hat and mittens for comfort” (Gardiner, 2002); nothing was mentioned about the sensory deprivation protocols. When it became known that prisoners had been shaved upon processing, the US military stated “They have been living in caves and tunnels for months and were infested with lice and other parasites” (Lowtger, 2002); again, nothing was mentioned about this being fundamentally a humiliation technique used to prolong the shock of capture. When the first prisoners arrived at Guantanamo, they were held in cages in Camp X-Ray that were exposed to the elements. Rather than describe the cages, newspapers used terminology like “open air shelters” (Murdock, 2002). Another row erupted when photos of men being wheeled on stretchers to interrogation surfaced. The reason given by the US military, and reported in Australian newspapers, was that “only injured prisoners were being wheeled to interrogation” (“US admits quizzing injured detainees - War on Terror: Patriot games”, 2002), and they gave the impression that the US military were doing it out of concern rather than as an interrogation tactic that ensures prisoners feel completely reliant on their captors for their survival.

The focus was commonly shifted away from the treatment prisoners were experiencing, to what kind of threat they allegedly posed to the public. One example of a common statement was “This government does not torture people. We stick to US law and our international obligations”, whilst at the same time stating that those detained were “extremists and terrorists” that will be questioned by “professionals

who have trained to get information that will protect the American people” (“Bush denies torture”, 2007).

When the US Government admitted that it would not allow the ICRC to speak with all Guantanamo Bay prisoners, it stated that “The *vast majority* [emphasis added] are treated consistent with the Geneva Conventions. There is a very small, limited number that are not” (“Red Cross steps in over 'unknown' detainees”, 2005). The paper stated that this was “because of the extraordinary threat they pose” (“Red Cross steps in over 'unknown' detainees”, 2005). In other words, the focus was shifted off the fact that officials had defied international law, and hidden prisoners from the ICRC who were tasked to check their welfare. Even when ICRC concerns about torture were published in the papers, US officials were quick to dilute any controversy. For example, US Secretary of Defense, Donald Rumsfeld advised journalists that reports of prisoner abuse were nothing more than “isolated pockets of international hyperventilation” (as cited in Manne, 2004).

The interrogation of Saddam Hussein also came into the spotlight in the early years of data. Papers stated that Hussein would be questioned about what happened to his “nuclear, chemical and biological weapons programs and any co-operation with the Al-Qaeda terrorist network” (Landay, 2003). US officials commented to the press that Hussein was “cooperative, and several experts said they did not think it would be difficult to keep him talking” (Landay, 2003). The same article went on to say “US interrogators abandoned harsh methods, such as torture, years ago...” (Landay, 2003), but claimed that Hussein would be kept in “shabby surroundings” and that they would be “occasionally depriving him of sleep” (Landay, 2003).

When there were some concerns raised over Hussein’s treatment, and others in US custody, a multitude of articles jumped to the defence of the US military stating that they were merely unproven allegations. For example, Tony Parkinson (2005) stated that there is an “eagerness to believe the worst about the US”, and shifted the focus off the victims of torture, to have the reader feel sympathy that the US Government and military had been accused of unproven actions – and they were inevitably the victims of “scurrilous myth-making” (Parkinson, 2005). Indeed, it was pejoratively unfavourable to call into question any actions by the US military, and intimated that those detained should be happy to be in places like Guantanamo. For instance, when

there were calls for David Hicks to have a fair trial during 2006, one commentator stated that he should be “grateful” that he was in US custody where he was treated in the “spirit” of the GCs (Taranto, 2006).

From 2004, there was a noticeable shift in the reinterpretation designed to inhibit outrage; this was after the Abu Ghraib photo releases. One article described the killing of Iraqi civilians in Haditha, Mahmoudiya and Abu Ghraib torture as “small blips on the radar” and a “slip up” (Bruni, 2006). The article headline read, “Soldiers under duress sometimes break” (Bruni, 2006). The torture perpetrated against men, women and children at Abu Ghraib was commonly minimised as only amounting to ‘abuse’ or ‘mistreatment’. The Australian Government went to great lengths to parrot the US Government line that it was an “aberration” and that the US does not condone torture (Manne, 2004). Former Prime Minister John Howard described the torture that took place in Abu Ghraib as an anomaly, and a “misbehaviour” of some US troops (as cited in AAP, 2004, para. 9). Howard not only belittled and minimised the experience of the torture victims by saying that “far worse” had been done under Saddam Hussein (as cited in AAP, 2004, para. 5), but immediately defended and indeed endorsed the actions of the US by saying that they had admitted it was a problem and that those responsible had been court martialled, using the official channels tactic.

Meanwhile, Bush Administration politicians were in overdrive in an attempt to defend their position. Cheney’s comments about waterboarding were one of the central features of reporting about torture in 2006. Cheney described waterboarding as a “dunk in the water” (as cited in "Cheney backflip on 'water torture' 2006", 2006). Australian politicians followed suit with reinterpretations such as these. As aforementioned, one of the more striking assertions made by former Attorney General Philip Ruddock was that sleep deprivation was not torture. Rather Ruddock, who has legal training, stated sleep deprivation was, instead, a form of coercion (Smiles, 2006). Howard also clarified his position on sleep deprivation by stating “If you’re asking me that every piece of interrogation that involves sleep deprivation of some degree (if) that’s torture, I don’t necessarily agree with that” (as cited in McPhedran, 2006). Howard went further in defending the actions of the US

Government, by denying that prisoners were tortured in Guantanamo, but was vague in the definition of torture (Smiles, 2009).

Whenever there were revelations that people were tortured in US custody, articles were released saying torture was a positive or normal occurrence, or that it was not really that bad. One columnist stated “yes, the ‘abuses’ were terrible, but what they have done is worse...” and went on to suggest that torture was carried for the public’s protection (Devine, 2004). The Executive Director of the Australian Defence Association, Neil James, was quoted in the *Weekend Australian* as saying that judicial torture can no longer be dismissed as an eccentricity, and the argument about torture is worth having (Hope, 2005). One commentator went even further and stated that preventing torture “comes at a price”, because all states want to be able to “extract information out of their own citizens” (Ignatieff, 2006). He went on to argue that ‘coercion’ is not the same as torture; he claimed there is “a necessity of using coercive methods on a small category of terrorists who may have information vital to saving the lives of innocent people” (Ignatieff, 2006). Of course, the author did not delve into the methods of establishing whether the individual being tortured is actually a terrorist.

Then there were outright absurd articles that portrayed torture as “compassionate” and an “essential life-saving tool” (Bagaric, 2008). Dean and Professor of Law, Mirko Bagaric, had a number of articles published in *The Australian* newspaper that reinterpreted the inhumane and barbaric practice of torture as an act of compassion for the greater good. Bagaric (2008) posited that those tortured are “wrongdoers” and any pain inflicted on a person being tortured would be outweighed by the lives saved. When articles about torture surfaced, Bagaric claimed that any compassion shown towards prisoners was “misguided” (Bagaric, 2007). Bagaric used the highly-discredited ticking time bomb theory (Card, 2010) in a number of his articles, and attempted to induce the audience into believing that there had been a case where interrogators only had hours to find out information necessary to save lives before a bomb exploded.

Former Foreign Minister Alexander Downer also released an article in 2009 claiming that it was “dilemma” about whether or not to torture people (Downer, 2009). He obediently asserted the same line as the Bush Administration that “lives

were saved” because of the torture of one man in US custody, despite the fact that this was disproven later. Downer (2009) also expressed confusion about whether waterboarding and sleep deprivation amounted to torture under international law, giving the public the impression that these techniques were unclear under the CAT. Downer went on to say “if [torture] saved the lives of your own children would it worry you their lives were saved because someone was ‘waterboarded’?” (Downer, 2009). Downer did not ask the reader to ponder whether they would be accepting of their own children being waterboarded if they were the ones deemed terrorists who supposedly had information to ‘save lives’.

Torture was also presented as necessary to protect civilians in a 2004 article (Shiel, 2004). The author called for torture to be legalised so that there is some “accountability” (Shiel, 2004). The same line was taken in 2009 when a Queensland federal MP called for torture to be legalised in Australia, but, he said on the condition that it was done in an “appropriate way” and “appropriate context” (McManus, 2009). Another article claimed torture was a problem not because it flouts international law, creates resentment, and destroys the moral fabric of society, but because it can be used as a “recruitment tool for terrorists” (Bruni, 2005).

When the US Government admitted to holding people in black sites, the narrative switched from outright denial, to stating that they had ‘no choice’ but to condone the CIA program of extrajudicial seizure, transportation and interrogation of suspects. On a visit to Europe in 2005, Condoleezza Rice stated that the CIA’s rendition program “saved innocent lives” and “prevented attacks in Europe” (as cited in Hope, 2005). Despite damning evidence that had already been released detailing victims’ testimony, Rice defended the US Government’s human rights record, and stated that the US “does not authorise or condone torture” (as cited in Hope, 2005). The UK Government also engaged in reinterpretation, and defended MI5s involvement in the “abuse” of “suspects overseas” saying that they had to get help in order to prevent an “imminent” attack (“We had to work with torture agencies, insists MI5 chief”, 2009).

As in the US and Australia, the torture of prisoners was reinterpreted as ‘abuse’ or ‘mistreatment’ and torture was framed as necessary to save lives. If newspapers did use the word torture rather than ‘abuse’ or ‘mistreatment’, it was common for articles to place torture in quotation marks. For example, headlines read “‘Torture’ of

Aussies blasted by lawyers” (2004), or “‘Torture’ exposed at Guantanamo” (2004). This is theoretically akin to newspaper articles placing rape in quotation marks in a story relating to a vicious sexual assault.

Whilst the Australian Government repeated publicly that the US Government does not torture, documents later obtained under FOI revealed that Australian officials did not seek clarification as to whether the US Government’s interpretation of torture was the same as the Australian definition. The Australian Government simply stuck to the US line that lives were saved by the use of particular techniques.

These claims became particularly pertinent again after Bush released his memoirs in 2009 and extracts were published in Australian newspapers. An extract in the *Weekend Australian* focused on Bush’s perspective on the torture program. Bush stated that he was assured that interrogations would be carried out by medical professionals, and “medical personnel would be on site to guarantee that the detainee was not hurt” (Bush, 2010). He further stated that he requested the DoJ to conduct a legal review of the techniques the CIA wanted to use, and that they “concluded that the enhanced interrogation program complied with the Constitution and all applicable laws, including those that ban torture” (Bush, 2010). Bush claimed that doctors assured him that waterboarding did not cause long term harm, and that therefore it would not reach the torture threshold (Bush, 2010). Bush also claimed that had he not authorised waterboarding, there would be a greater risk that the country would be attacked. This included false statements that the interrogation techniques proved “highly effective” (Bush, 2010), taking the focus off the blatant breach of international law and the fact that he had admitted to authorising criminal behaviour.

Omissions from Guantanamo reports – Confessions under torture and the reinterpretation of events

Omissions in articles relating to torture that occurred as part of the Guantanamo interrogation program were significant and served to reinterpret events. For example, as already mentioned, a number of articles refer to David Hicks, Joseph Thomas and Mamdouh Habib as “confessed” terrorism supporters. The stark omission in the majority of the articles was that the men were subjected to conditions and treatment

that amounted to torture, and therefore none of their statements obtained whilst in the custody of the US or their agents could be relied upon. As explored in Chapter Three, even before arrival in Guantanamo, both Mamdouh Habib and David Hicks were subjected to beatings, sensory deprivation/bombardment, being spat on, kicked, hit, sexually abused, threatened with rape, sexual assault and sleep deprivation, amongst other cruelties. It has now been revealed that all Guantanamo prisoners were drugged. More specifically, upon arrival to Guantanamo, it has been now proven that most, if not all prisoners, were administered a treatment dose of the US military developed anti-malarial drug called Mefloquine (Nevin, 2012).⁸⁵ Researchers have been troubled by this due to the fact that Mefloquine has been long associated with severe psychological impacts such as hallucinations, depression, suicidal behaviour, anxiety and the prospect of neurotoxicity (Nevin, 2012, p. 1282). Researcher and medical practitioner Dr. Remington Nevin (2012), stated that the administration of the drug “suggests the troubling possibility that the use of Mefloquine at Guantanamo Bay may have been motivated in part by knowledge of the drug’s adverse effects...” (p. 1281). However, this was not the only drug given to prisoners over the years. There are a long line of reports from former prisoners and their lawyers that point to the mass administration of different pills that had strange physical and psychological effects on detainees (Begg, 2007; Hicks, 2010; Dratel, 2012). Many newspaper articles assert that confessions were being attained, but there was little interest in the conditions under which the statements were obtained.

The passing of legislation also served to reinterpret events, in most part because it appeared to confuse many journalists writing about torture given their lack of expertise in international law and torture prohibitions. These omissions manifested in articles presenting skewed stories that reinforced official narratives. For example in 2007, papers reported that Bush passed an executive order that would “allow harsh questioning of suspects” but ban “cruel and inhumane treatment” (“Bush clears way for CIA interrogations”, 2007). Whilst on face value, it appeared that the treatment amounting to torture would be prohibited, the legislation had gaping holes that still allowed prisoners to be subjected to conditions and treatment amounting to torture. Under the legislation, CIA officials were also still immune from prosecution, so

⁸⁵ David Hicks’ medical records confirm that he was definitely given the drug.

whilst the legislation gave the appearance of preventing torture, it allowed cruel and inhumane treatment in other forms.

Interestingly, in 2009, when the Rudd Government announced that it wanted to introduce legislation prohibiting torture carried out overseas, the ADF publicly raised concerns over their ability to carry out their roles because they work so closely with the US military (Banham, 2009). No concerns were raised over what that might mean, and how Australian troops were being put in the position of working with international forces who were torturing prisoners in overseas settings – or whether they were engaging in such behaviour themselves. The problem was presented as being the legislation, not the actions of the military or US forces.

Government reframing and interpretation was uncritically transmitted by the media in a number of ways. Some of the inadequate coverage was not deliberate on the part of all journalists: some were simply ill-equipped to understand the complexity of the situation and convey it to the public. For example, I attended a press conference in 2011 during which David Hicks and his lawyers announced they were appealing his Military Commissions conviction in the US. After the conference, I was standing near a journalist from a major Australian news network who was giving a grab to the camera to introduce the story. The grab was littered with inaccuracies, including the journalist stating that David had pleaded guilty, and that he had been released from Guantanamo on bail. This gave the impression that he had been through a normal court process, signed a plea deal admitting guilt, and been convicted in a civilian court with rules disallowing evidence obtained through torture. I stopped the journalist half way through the grab and provided him a list of the inaccuracies that he just conveyed to the Australian people. The response I received was telling. He stated, “we need to simplify it for the public...they just wouldn’t understand the facts”.

The same shortcomings affected many of the stories printed in Australia that aided in the misrepresentation of torture, many of the journalists saying they just did not have sufficient understanding of the issues they were reporting. They were also time poor, and did not have the time to thoughtfully report the complexity to the public. Other journalists used the excuse that their editors changed the stories after they had written them. The torture victims and their families were essentially powerless when

these occurrences of misreporting happened, and no one was held to account because the public was unaware of what had occurred because victims simply did not have the platform to correct the record.⁸⁶

Overwhelmingly, the newspaper stories over the ten year period studied show evidence of the reinterpretation of events by government officials and the media. From the time the first prisoners were detained in the War on Terror, it was clear that the framing of their treatment was being manipulated to stifle any outrage, including the conditions of detention and treatment and whether they were being held according to the laws of war. Consistent with Cohen's (2001) theory detailed in *States of Denial*, there are many examples of the perpetrators denying that torture occurred, and the results demonstrate that the Australian Government followed suit.

The denial of knowledge of torture was also a regular feature in the stories. Numerous examples showed members of the Howard Government purposefully avoiding questions about the US definition of torture, or simply repeating US talking points about the conditions of confinement of Australian prisoners. There is also evidence that officials defined torture to suit their own agendas, in particular, excluding sleep deprivation and waterboarding. Indeed, even when the US agents had been caught red-handed torturing prisoners, it was blamed on a few 'bad apples', or portrayed as an aberration. There was also plenty of evidence of lying about certain events, including the torture of prisoners at Guantanamo, Abu Ghraib and other black-sites. This in turn was used by authorities to minimise the consequences of the actions – they were after all just 'terror suspects'. When the photos of Abu Ghraib were released there was also ample evidence of blame shifting, with officials blaming lower ranking soldiers for mistreating prisoners. The media was quick to present torture narratives that focused on the victims' alleged activities in order to shift the focus off their torture. There was also evidence that the media framed torture as legitimate in some circumstances, and not in others.

⁸⁶ This was exacerbated because many former prisoners have avoided social media forums such as Facebook and Twitter, and therefore had no way of correcting the record in a way that bypassed the mainstream media.

Use of Official Channels to Give the Appearance of Justice

It is a natural that people want to trust authority and avoid complicated and disturbing issues (Chomsky, 2003a, p. xxv). It is certainly the case over the years that the governments involved in the War on Terror have counted on people's trust in order to shift the focus away from torture that has occurred either at the hands of their agents, under their watch, or by turning a blind eye. This section examines whether there is evidence that 'official channels' have given spurious legitimacy to injustice. When perpetrators are powerful, official channels such as investigations, can be used as a means of providing the public with the illusion of justice, when in fact, they have only served to further obfuscate the reality of the situation. Official channels dampen outrage because it is generally accepted that they provide justice, and therefore outrage is dampened when they are utilised (Martin, 2007).

The use of official channels can take many forms; it could be opening an investigation or senate hearing that has a limited scope, lacks independence and resources, or appoints 'experts' that may be influenced by those employing them. For example, a US Military Commission system could be seen as an official channel that gives the impression of justice, even though its members are all employed by the same institution, and it is orchestrated to prevent torture testimony from being heard. If the official channel is the legal system, courts may only look at legal technicalities rather than the merits or morals of the act/s. The use of an official channel also may entail an enquiry where the outcome is censored, such as the Inspector General of Intelligence and Security (IGIS) investigation into Mamdouh Habib's torture.

Official channels may also be used pre-emptively in order to legitimise an attack on a victim, or provide a means of shifting focus off the torture that has occurred, and devalue the victims. For example, the proceeds of crime case initiated against David Hicks could be seen as a means to legitimise the Australian Government's attacks on his personal character, even though he had been cleared of any known crime. The Australian Government also dropped proceedings after an affidavit detailing his torture was filed with the court, pointing to officials not wanting his torture testimony to be aired publicly.

It is also worth noting that challengers of injustice often use official channels as a means of exposing perpetrators thinking that the system will hold those who perpetrated the offences to account. For example, using the court system may have its advantages in exposing information to the general public, but it is also fraught with issues that serve to dampen outrage such as protracted duration, bias, technicalities and dependence on experts who may have vested interests. For instance, a perpetrator of torture may escape prosecution because they have diplomatic immunity under legislation, or, if a lower ranking member of the military has been convicted of assault, as they were in the case of Abu Ghraib, they may simply receive a letter of discharge rather than a lengthy prison sentence. These techniques shift the focus off those who ordered torture and aided in the cover-up.

The previous sections have already touched on many examples of these occurrences, including the use of so-called ‘experts’ pushing pro-torture agendas, or the technicalities in FOI cases, however, this section seeks to expand and provide further evidence collected from the data. As was evident in the previous sections, there are many examples that overlap with previous tactics, particularly reinterpretation and devaluation.

There are numerous examples of the use of official channels to give the impression that justice was achieved, or that credible investigations had taken place. During the early years of the War on Terror, the US Government mainly used higher-ranking officials to publicly state that torture was not being used and that prisoners were being treated humanely. For example in 2002, Donald Rumsfeld stated in a press conference that reports that a man was being tortured were “wrong and irresponsible” (as cited in "New US terror suspect", 2002), and Condoleezza Rice was quoted as saying that any allegations of torture would be “investigated and violators punished” (as cited in "UK law lords ban torture evidence", 2005). There were many occasions when Australian newspapers reported US official claims that they will investigate allegations of torture which had the effect of dampening outrage (“Torture order denied”, 2004). The US Government would also bring out “senior” lawyers for the Pentagon who stated that the US would not “permit, tolerate, or condone any such torture” (“US crackdown on torture”, 2003).

Many press conferences were held with men in military uniforms, giving the appearance of a trusted and credible source (Gallup, 2016; Marzaria & Bruck, 2014). The claims of humane treatment were then either reported in Australian papers without challenge, or they were repeated by Australian and British officials who defended the actions of the US military and other US Government agents,



Figure 16 - Lt. Gen. Anthony Jones speaking at a press conference about prisoner 'abuse' (Source: Ward, 2004)

coincidentally, using the same language. For example, as early as 2002, British officials reported that Guantanamo prisoners were in good health. They stated that there was “No sign of any mistreatment” (“Access to P.O.W.'s eases concerns over conditions - War on Terror”, 2002). Similarly, Australian Attorney-General Philip Ruddock echoed US claims that Australian prisoners were “in good health and being treated humanely” (as cited in DiGirolamo, 2003), and stated that no claims of torture had been made, even though later released FOI documents demonstrate that this was not the case.

When the Abu Ghraib photos were released, official channels were used as a method of stifling outrage in the US. A US Senate Armed Services Committee investigation into the torture of prisoners in Iraq was used as a way of reinterpreting what occurred, whilst at the same time, utilising the official channel as a means of misleading the public into thinking that the investigation would provide justice. High-ranking military officials used the platform to blame a breakdown in military leadership, and stated that the occurrences were “extremely rare” an “aberration” and not reflective of the “men and women of honour” who serve in the US military (Daniels, 2004). But the outcome of the investigation failed to provide any real justice for the victims.

When evidence of torture surfaced contradicting the official claims of the US Government that prisoners were being treated humanely, the Australian Government went to great lengths to protect their reputation at the expense of revealing the truth about torture. One of the most striking examples was when it became known that previously discussed military officer George O’Kane was involved in hiding

prisoners from the ICRC at Abu Ghraib prison and knew about the torture of prisoners. Whilst Australian officials publicly stated that they would investigate claims of torture, privately they were working out ways of protecting the reputation of the US. FOI documents show that a DFAT official commented they would “need to get around this somehow”, and were more concerned about preventing the embarrassment to the US Government (Doc 59, as cited in Public Interest Advocacy Centre, 2011b, p. 13). Many times, it seems that Australian officials were able to bypass acknowledging claims of torture and mistreatment, simply by not asking the question.⁸⁷ Indeed, Prime Minister Howard denied that any Australian military officials had witnessed any mistreatment in Iraq, and even criticised the publication of O’Kane’s involvement in Australian newspapers (McPhedran, 2004). Howard also protected O’Kane by preventing him from testifying, both in Australia and the US, before any committee’s investigating the torture of prisoners. Official channels were certainly used to dampen outrage about Abu Ghraib, whilst inexorably protecting those involved.

The use of official channels to provide legitimacy to the torture of Australian citizens in US custody was an effective way of inhibiting outrage at the conditions and treatment they were subjected to. In Mamdouh Habib’s case, after years of civil litigation in the Australian courts, it was reported that he had obtained a statement by an Egyptian official confirming that Australian intelligence agents were present for his torture. Not long after this, the Gillard Government arranged an out of court settlement and ordered an investigation by the former IGIS, Vivienne Thom (2011), into his transfer to Egypt. This inhibited outrage in several ways.

Firstly, the investigation by the IGIS meant that the material examined by Thom was secret from the public. There was no formal public judicial hearing where people were called as witnesses, and names of those involved were not made public. Even when the report was released, the public only gained access to a redacted version due to ‘national security concerns’ (Thom, 2011). Secondly, the scope of the

⁸⁷ More recently, the former Foreign Minister Bob Carr was asked whether he had any knowledge of a grand jury investigation into Australian citizen Julian Assange, who at the time of writing is stuck in the Ecuadorian embassy in London because he fears extradition to the US, and subsequent torture whilst in US custody. Senator Carr said he was not aware of any investigation by the US law enforcement agencies, however, when further pressed by Senator Scott Ludlam, he admitted that he did not ask because, the fate of the Australian had nothing to do with the Australian Government (Dorling, 2013).

investigation did not cover any investigation into Guantanamo Bay, or any of Mamdouh Habib's mistreatment at the hands of the US Government. This was not made clear to the general public, which is problematic given that the involvement of the US military is paramount, considering he was held without charge for years in Guantanamo. Thirdly, part of Mamdouh's settlement with the Australian Government was a confidentiality clause – the details of which have not been made public, which is a form of cover-up. Curiously though, after this was offered, Mamdouh publicly stated that the 'real' torture occurred in Egypt. One could surmise that part of the agreement was that he would not speak of his torture at the hands of the US Government and its contractors. These issues were not raised in the media, and little attention has been given to the fact that not one person has been held to account under the CAT for Mamdouh's torture.

The use of official channels to give the appearance of justice was also apparent in the case of David Hicks. After the Abu Ghraib photos surfaced, an investigation into David's treatment was ordered by Donald Rumsfeld after pressure mounted on the Australian Government to investigate. Rather than order an independent Australian investigation, the Australian Government relied on the US military, including those who were accused of torturing him, to conduct the investigation. The result was a Naval Criminal Investigation Service (NCIS) report, the scope of which was limited to an investigation of assault that occurred prior to arriving at Guantanamo; including his detention in Mazar a Shariff, Kandahar, and when he was flown by helicopter to Pasni, in Pakistan. His treatment aboard the two prison ships, the USS Bataan and USS Pelelieu, were excluded from the investigation. The investigation and report were delayed for years, and the report was never released to the public.

Despite this, the Howard Government stated that the report had found no evidence of mistreatment. Ruddock was quoted in 2006 as saying he had no "knowledge of evidence" backing the "claims" (as cited in "No evidence of Hicks torture, says Ruddock", 2006). FOI documents later obtained by the author in Australia demonstrate that it is still unclear as to whether anyone within the Howard Government actually read the report. Most communications between Australia and US officials at the time talk of the summary of the report, not the contents. For example, the report itself contains statements that are blatantly inconsistent with the

conclusion of the report, and the summary points to inconsistencies that confirm David's account which means that either Ruddock did not read the report or summary, or that he lied to the public.

Obtained by the author under FOI in the US, the NCIS (2005) report reveals:

- Sworn evidence from navy brig members that 'men in suits' had come to ships, taken photos of the prisoners, and removed David's medical records, preventing any evidence of his or other prisoners bruises being provided to the investigator. One brig member said he was told by one of the men "we were never here".
- Photos of David and other prisoners when they were hooded and shackled were taken by USS Bataan crew members, and included in the report.
- Several interviews with US military personnel backed up David's experience, including witnesses who saw his hood and overalls covered with spit, dust and vomit, corroborating testimony that he was beaten by civilian forces at an offshore location.
- Dusty footprints were seen on all of the prisoner's overalls, including David after he was brought onto the USS Bataan.
- Interviews pointed to evidence that David was bleeding from the head after being taken off the ship and subjected to beatings in Pasni, which corroborated his statements that his head had been rammed into the concrete.
- Prisoners were only referred to by number and the Standard Operating Procedures allowed for them to be bound by their biceps and had sandbags placed over their heads.
- There was an acknowledgment that prisoners were deprived of sleep and food.
- One military member states that David had complained about spit in his food.
- One brig member recalled "when the detainees first came aboard the USS Bataan circa Nov/Dec01, some of them had cuts and bruises, and one detainee was missing a portion of a leg" (p. 127).

- Other prisoners, who cannot speak English, described the same events as David. One prisoner who was with David at the time recalled “5 or 6 other detainees were subjected to kicking, hitting, spitting and having urine thrown on them by the “Americans” (p. 10). [Redacted] also stated when they were moved from the ship to land, heavy bags were placed over their heads. This made it very difficult to breathe, and he could not see anything” (p. 369).
- There were inconsistent statements about Marines carrying batons, guns and other weapons that were used against prisoners.

Despite the contents of the report corroborating David’s statements, his torture was continually framed by Australian officials and the media as ‘claims of mistreatment’. This is in spite of the NCIS (2005) report noting that conveniently no log-books were kept at the time in relation to the guards, or the prisoners; and many of the Marines who were on duty were unable to be located for the investigation. The report stated: “Inquiries aboard the USS Pelelieu have determined that no records exists aboard the ship regarding [Hicks] detention there...no medical records...were generated prior to his arrival in GTMO” (NCIS, 2005, p. 3). It was also clear that no great attempt was made to locate those who had taken the prisoners offshore for the beatings. There were several references to the processing of prisoners being documented on film, however, the film had supposedly gone missing. The ‘investigation’ and subsequent commentary from the Australian Government was a clear attempt to use official channels to present a picture to the public that claimed there was no evidence of torture, despite the substantiated statements in the report. In fact, a cable from the Department of Foreign Affairs and Trade (DFAT) demonstrates that the Australian Government asked the US Government for “speaking points” so that former Foreign Minister Alexander Downer could tell the public that there was no evidence of mistreatment (DFAT, 2004). In addition, the definition of abuse was never clarified in the NCIS report.

This obfuscation extended to situations where members of the Howard Government claimed that people had visited David over the years in Guantanamo to conduct ‘welfare checks’. In 2004 Prime Minister Howard dismissed claims of torture, and told the public he had “confirmation” of David’s welfare from the Australian Ambassador and the Consul-General in Washington (as cited in Shaw, 2004).

Documents reveal that Howard Government ministers were misleading the public when they stated David was in good health and they had sent someone to check on his welfare. For example, in 2005 David handed a list of complaints to the Australian consular official, including complaints about the use of ‘noise machines’. A later cable saw the US explain that the noise was attributable to ‘construction noise’, despite the fact David had conveyed that the US military were leaving chainsaw engines revving outside the concrete cells for hours at a time (Hicks, 2010). Consular records and other cables obtained under FOI demonstrate that David’s mental health had seriously deteriorated, he was in chronic back pain, was suffering from sleep deprivation due to the 24 hour lighting, and that he had been prevented from seeing the sun for an extended period. Despite this, Howard Government ministers told the public that he was in good health. In January 2007, Downer told the public that there was “no evidence” that David’s mental health was suffering, and that “I know of somebody who saw him last week – and there’s no evidence he’s in some sort of mental tumult...he’s in good health” (as cited in Australian Broadcasting Corporation, 2007).

The consular records tell a different story. David refused to talk to the Australian official on a number of occasions after he realised that they were not doing anything about his situation. In addition, David’s medical records demonstrate that at the time Downer was claiming publicly that David was in good health, he was in fact suicidal, refusing to eat and not showering. The situation dramatically deteriorated again in January 2007, and cables between Washington and Canberra discuss everything from the rationing of toilet paper to matters of concern about David’s health and welfare. Despite this, the public was assured that David was being treated humanely. In other words, officials lied, and kept shifting attention of attention by telling the public that he was dangerous.

The cables also point to the way in which official channels were used to stifle debate about the treatment of Guantanamo prisoners. There was no discussion about the clarification of the definition of abuse until later years of the Australian’s detention, and the tone of the cables suggested that a number of informal discussions had taken place before anything was put on paper. None of the cables released clarified whether the US had provided the definition, and cables generated within the

Attorney-General's Department suggest that it was clear that the Australian Government's definition of torture was different to that of the US Government. Simultaneously, the Australian Government ministers were telling the public there was no evidence of abuse.

The fact that David Hicks was even put through the Military Commissions system also played an enormous role in giving the appearance that he was treated in accordance with the law. Although it is well-known that the plea deal was politically orchestrated (O'Brien, 2011), and that he was forced to plead guilty to an invented war crime that was applied retrospectively (Dratel, 2012), the Australian media continually referred to him as a war criminal and convicted supporter of terrorism. In other words, in the public realm the only justice that needed to be served in his case, was holding him to account for his supposed involvement in terrorism – not the fact that he had been held in conditions and was subjected to treatment that amounted to torture, which subsequently meant that he signed a plea deal to get out of Guantanamo. Heavily redacted cables between Washington and Australia released in 2014 demonstrate that the admissibility of evidence obtained under torture and coercion was discussed within the Attorney-General's Department as an area of concern, and more importantly, that the Military Commissions were acknowledged as not in compliance with international fair trial standards. Instead, the Attorney-General's Department played word games in their public talking points, and stuck to the line that commissions were 'similar' in nature to international criminal tribunals, like the International Criminal Tribunal for the former Yugoslavia, but they acknowledged that they did not provide the same fair trial standards. Despite this, members of the Howard Government were selective in what they told the public, and continued to publicly state that they were satisfied that the Australian would be subjected to a system that no US citizen would ever be exposed to.

The Australian government's involvement in David Hicks' transfer to Guantanamo, his subsequent torture and Military Commissions conviction has never been investigated. Rather, when the campaign was mounting for an independent investigation, the Australian Government launched action under the proceeds of crime legislation to shift the focus off its own actions. Whilst this is an important piece of legislation that prevents people from profiting from their criminal activity,

in David's case, it was used as a diversion to take the focus off the evidence that was coming to light about his torture. The lead up to the case was highly stressful, however, David was pleased that he would finally have his day in court. Before this case, he did not have the opportunity to go before a regularly constituted court, where fair trial protections were in place. However, the case was dropped by the Commonwealth Director of Public Prosecutions (CDPP) after his legal team submitted an affidavit outlining the torture he experienced in Guantanamo. So, whilst the official channels appeared to prevent further injustice, in effect, all that occurred was that the public was given the impression that he was convicted of a crime, and again they were prevented from hearing his torture testimony, and evidence about his treatment was never tested in a court. Interestingly, because proceedings were launched against David, his publisher was told that many of his books were pulled from the shelves. In this way, his detailed torture testimony was again prevented from hitting the mainstream.

Former Guantanamo child prisoner Omar Khadr was also a victim of official channels in relation to his Military Commission 'trial'. In 2010, Khadr was brought in front of a US Military Commission in the attempt to give the appearance of justice to the American people, as well as inhibit outrage at his torture. One of the most important examples of this was when Military Commissions Judge Parrish decided that the "confessions" Khadr made under torture at both Bagram airbase and in Guantanamo could be heard as part of the case against him ("Military judge allows alleged confessions", 2010). In April 2010, federal agents testified that they had subjected then 15 year old Khadr to techniques such as "stress positions and sleep deprivation", and threatened his rape in order to "influence the detainee" ("Military judge allows alleged confessions", 2010). Khadr was later forced to take a plea deal in much the same way as David Hicks, despite his torture and ill-treatment in US Government custody. Evidence to support his case was also destroyed (Edney, 2013).

The prosecution of prisoners who were labelled as high-value detainees in Guantanamo was also used to divert people's attention off their torture through the use of official channels. Prisoners such as Abd al-Rahim al-Nashiri were central in the US Government campaign to instil fear into the community, and convince the

public that they were undeserving of trials which could not use statements obtained under torture. Nashiri was charged in 2010, and was one of the prisoners the CIA admitted to waterboarding. Despite this, articles focused on US Government assertions about his alleged actions, rather than his torture ("World snapshot trial for terror suspect", 2011). He has still never been convicted of a crime.

The obfuscation was not confined to Guantanamo prisoners: there have also been countless situations where Australian Government officials relied on diplomatic assurances that those held in the custody of countries known for permitting torture were being treated humanely, despite the clear evidence to the contrary. For example, Australian man, Talaal Adrey was tried and convicted of terrorism related offences in Kuwait in 2005, and although there were serious allegations that the evidence used to convict him was obtained under torture, the Australian Government relied on diplomatic assurances and an investigation ordered by Kuwaiti officials that he was not tortured. This is despite the fact there was evidence that he was tortured so violently his fingernails had been ripped out (Bruni, 2005). Parliamentary secretary for Foreign Affairs, Bruce Billson was reported as saying that that the investigation was "comprehensive" and that "medics found no evidence of torture" (Bruni, 2005).

This Australian Government collusion with other torture sanctioning countries occurred frequently over the years. After allegations of torture surfaced over the treatment of Riduan Isamuddin Hambali and others detained on suspicion of the Kuta nightclub bombings in Bali, Australian authorities relied on Indonesian authority's investigations to diminish any concerns over their torture. One paper stated "investigators will use trickery, falsehoods, rewards and silence in an attempt to get Hambali to divulge what he knows about terrorist plots", but Australian officials told the Australian public that the final outcome of the report was that "no evidence of torture had been used in any interrogations" (Dunn, 2003).

In addition, Australian officials used official channels to inhibit outrage in relation to cases involving Indonesian security forces. Detachment 88 was created after the 2002 Bali bombings as a specialist force to prevent terrorism. Funding and training for the unit has come directly from the Australian and the US Governments (Human Rights Watch, 2010). After allegations surfaced that Detachment 88 were torturing

its ‘terror suspects’, Australian papers reported that an investigation was to take place (Allard, 2010a). Dissidents who have been detained by Detachment 88 describe being severely beaten, sometimes for weeks at a time (resulting in broken bones), beaten with wire cables and wooden bats, kicked, stripped naked, forced into stress positions, having weapons pointed at them during interrogations, having plastic bags placed over their heads, nearly suffocating them, being pierced with nails, and forced to eat raw chillies (Human Rights Watch, 2010). To counter any outrage from the allegations, the Australian Government reportedly sent “an official” to Maluka to investigate the brutality and torture experienced by people in West Papua (Allard, 2010a). It was initially reported that Detachment 88 would be removed from Ambon, a key province (Allard, 2010c), but that they would stay in West Papua, where it had a “legitimate role” to play in the simmering “independence campaign” (Allard, 2010b). This gave the impression that the Australian Government were acting on concerns, when in effect, nothing changed.

Sham investigations were not confined to the US or Australia. The UK also held inquiries into claims its agents were involved in the torture of prisoners overseas. Whilst the investigations gave the appearance that something was being done about the unlawful conduct of intelligence agencies, they also served to cover-up the UK Government’s involvement in torture. Australian papers reported the investigations of the intelligence officials, however, little was made of the Blair Government’s knowledge of the torture of people in US custody (“Cameron orders torture inquiry”, 2010). This was again apparent after the Diego Garcia affair surfaced, and it was in the public domain that CIA jets had landed on the British controlled territory, with permission from the UK Government (UK Intelligence and Security Committee, 2007). Although many cases have been documented by lawyers and advocates for former prisoners, the full extent of UK involvement is still unknown to the mainstream public because the reports effectively served to obfuscate and stifle outrage.

The passing of legislation or the hearings of Senate Committee’s in the US were also used to dampen outrage at the injustice of torture. Over the years, many pieces of legislation were passed with the purported implication that torture would be prevented. The reality was however, that methods and treatment that amounted to

torture continued because of the loopholes in the legislation, or because, even if torture was reinterpreted as ‘organ-failure or death’, those responsible were immune from prosecution. In 2006, it was reported that Bush had finally put an end to torture by passing anti-torture legislation, whilst simultaneously introducing a bill that would allow the parts of the CIA to continue using “coercive interrogations” (Sullivan, 2006). The bill not only granted retroactive immunity to officials who ordered torture in the years post-9/11, but also allowed evidence to be used in Military Commission trials that was obtained under ‘coercion’ if a military judge decided (“Few changes to terror trial rules”, 2006; Sullivan, 2006). In 2010, President Obama signed an executive order allowing for the indefinite detention of those held in Guantanamo Bay, giving the appearance that the American public needed to be protected from some of them who were too dangerous to be released (“Review plan for Gitmo inmates”, 2010).

Whilst US Senate committees appeared to ask the tough questions from members of the Bush Administration, they also provided a platform to give the impression that their actions were being scrutinised and therefore, held to account. Whilst there is some merit to the argument that information demonstrating the cover-up of torture was revealed during these Senate hearings, it was also clear that those officials who lied or obfuscated disclosure, were never held to account. For example, in the early years of the War on Terror, then Attorney General John Ashcroft appeared before a Senate Committee stating unequivocally that the US does not torture, whilst at the same time refusing to release Justice Department memos that contended the President was not bound by anti-torture laws (Coorey & Anderson, 2004). During the same appearance, Ashcroft stated that torture would be investigated, if it was “outside military jurisdiction” (Coorey & Anderson, 2004).

Courtrooms did not provide much relief for torture survivors and victims either. Whilst several cases were taken before mainly European courts, those responsible for torture have continued to evade responsibility. For example, in 2009, 23 US citizens who were involved in the extraordinary rendition program were convicted in Italy of kidnapping (“Italy convicts secret CIA terror force”, 2009). The US citizens were tried in absentia, and no one has served any time in European prisons given that the US Government refused to cooperate with the trial. Even when European lawyers

tried to bring cases against former Bush Administration officials they have been pressured to drop proceedings. This was demonstrated in the Spanish case against Mr Alberto Gonzales, former Under-Secretary of Defense Douglas Feith, former Vice President Dick Cheney's chief of staff David Addington, Justice Department's John Yoo and Jay Bybee, and Pentagon lawyer William Haynes ("Spain torture case considered", 2009). WikiLeaks documents later revealed that the case was dropped because of the political pressure that the US Government placed on Spanish officials (Tremlett, 2010).

Although US officials regularly promised the public that those responsible for torture would be investigated and then held to account, there were many examples that demonstrated that this simply did not occur, and if it did, it was only lower level troops, not those who ordered torture. For example, when it became public that the CIA had destroyed 92 videos depicting the 'interrogation' of certain prisoners, the head of the CIA stated that there would be full accountability for those who destroyed the tapes ("CIA chief pledges 'full accounting' for destroyed interrogation tapes", 2007). No one was ever held to account. The same occurred when President Obama released the so-called torture memos in 2009 (Smiles, 2009). Releasing the memos provided the appearance that justice was being served, and that the Obama Administration was proactive in holding torturers to account, however, no one was ever prosecuted or held responsible. Although Australian newspapers ran headlines such as "Criminal probe into US torture", President Obama told the media that he preferred to "look forward, not back", and that he would not be prosecuting anyone (as cited in Devlin & Hess, 2009).

Whilst the role of the United Nations is theoretically one of global oversight, it remains unable to enforce decisions. For example, whilst the US Government has signed and ratified the CAT, and the *International Covenant on Civil and Political Rights* 1966, which include prohibitions on torture, the government made reservations to their compliance, and even if they are found to be in breach, the decisions are unenforceable and largely disregarded. This was demonstrated when US Government delegates appeared before the UN Committee against Torture (UNCAT) for the four yearly review of their compliance with the CAT in November 2014. Whilst one US delegate stated that the US had "crossed the line" and "had not

lived up to its values” in the wake of the 9/11 attacks, others said the US had taken necessary steps to “ensure adherence to its international obligations” (Office of the High Commissioner for Human Rights, 2014, p. 1). However, whilst the US Government delegates stated that people involved had been held to account, the reality of the situation is much different. The Committee raised the fact that the John Durham investigation into detainee abuse had not interviewed any former detainees, used the States Secrets Privilege to negate any responsibility, invoked claims of immunity for government officials, and failed to result in any prosecutions (Office of the High Commissioner for Human Rights, 2014). In addition, the continued use of black sites on a ‘short-term transitory basis’ and the failure to register detainees with the ICRC was also raised (Office of the High Commissioner for Human Rights, 2014). The US delegates were grilled on the continued situation in Guantanamo, and the extraterritorial application of torture prevention legislation. The situation for Guantanamo detainees that were being held without charge or trial, and were being forcibly fed was also raised.

One Committee member noted that the US Government was playing “verbal gymnastics” in its attempt to obfuscate its responsibility under international law (Office of the High Commissioner for Human Rights, 2014). For example, whilst the US reported that they had taken all steps to ensure accountability, the State Secrets Privilege was invoked as a reason to prevent many cases from judicial scrutiny. The US delegates stated that torture was prohibited under all circumstances, however, the reality was that taking detainees to other jurisdictions enabled the avoidance of responsibility because of the wording of the legislation. These omissions were largely left out of the public domain and served to cover-up torture in the general community.

Despite the UNCAT raising the above issues of concern about the US torture program, the outcome of the hearing was unenforceable and the situation has not changed. The official channel inevitably became a forum for US officials to spout narratives that distorted and omitted the reality of the US Government’s refusal to investigate and prosecute those who ordered torture and lie to the public about their respect for human rights. Little media attention was provided about the UN hearing, and even less was aired about the concerns raised by the UNCAT.

Australia has also disregarded decisions made by UN human rights bodies such as the Committee against Torture. In the David Hicks case, the Human Rights Committee found that the state of Australia violated his rights (United Nations Human Rights Committee, 2016). However, using the official channel ultimately only served to gain minor media coverage – it was a far cry from any semblance of justice. The Committee's investigation took years to be adjudicated, was limited in scope, and the ruling was inevitably unenforceable in Australia. David was not compensated, nor did he receive an apology from the Australian Government.

The same situation is apparent in relation to the ICC. The US Government is not a party to the *Rome Statute of the International Criminal Court* 2002, so it cannot be brought before the ICC on war crimes charges. It is not Western governments that are brought before the ICC, it has largely been people from African nations. In the end, these international official channels serve to further dampen outrage because there is an assumption that they are able to hold violating states to account, when in reality, it is merely the illusion of justice.

There is ample evidence that official channels continue to give the appearance of holding to account those responsible for ordering and carrying out torture. Whilst some European countries have held a number of investigations that have exposed the use of black sites and the torture of people on European soil ("Europeans to probe CIA prisoner claims", 2005), the European parliament was still calling for the European Union to undertake a fact finding mission into member states that were involved in the CIA rendition program as late as 2016 (Emmons, 2016). Whilst courts in both France and Spain have attempted to prosecute those involved in the torture of its citizens, the US Government has refused to hand over documents requested by the judges in the cases (Emmons, 2016). The former commander of Guantanamo, General Geoffrey Miller, was subpoenaed to appear before a French court in early 2016, to answer questions about his role in the torture of prisoners at Guantanamo (Emmons, 2016). Rather than appear before the court, he chose to ignore the subpoena, and will only be called to account if France issues an arrest warrant, and then only if he travels to France.

Official channels were commonly used in the US and Australia to inhibit outrage. A number of investigations were opened into allegations of mistreatment and torture of

prisoners over the years, but they were either biased and investigating their own colleagues, or the investigations were so limited in their scope, that the full extent of official incompetence would be covered up. This was apparent in relation to the IGIS Mamdouh Habib inquiry that had such a limited scope, his treatment in US custody was ignored to prevent embarrassment to US officials. Many of the reports were classified either entirely, as was the case with the NCIS report into David Hicks' torture, or with some parts redacted, in which case the public was still left with conclusions that did not match the contents. The court system was also shown to have let torture victims down. As the Backfire Model (Martin, 2007) suggests, even if the cases made it to court, which many did not, they only examined legal technicalities rather than the merits or morals of the way torture survivors and victims were treated. International mechanisms have been used to dampen outrage, despite the fact they lack the ability to ensure state compliance with their rulings. Not one architect of the US torture program has been held to account, including the psychologists and doctors involved in crafting and carrying out the torture techniques. The results demonstrate that this method of inhibiting outrage has proven to be particularly well used in both the US and Australia.

Intimidating or Rewarding People Involved

The tactics of intimidation and reward involve knowing that the act of torture occurred, but intimidating or rewarding targets, witnesses, campaigners and the media so nothing is done about it (Martin, 2007). Rewarding people is discussed in a separate section below, but it may involve incentives for acquiescence, such as promotion or the conferring of rewards. There are several ways that authorities inhibited outrage at the injustice of torture by intimidating those who were subjected to torture. Intimidation through surveillance, politically motivated prosecutions and keeping the individuals embroiled in defending themselves publicly so they would not have time to prepare legal cases that would have exposed their treatment, was common.

In Australia, the way the Joseph Thomas case was handled is a key example of the use of intimidation. When Joseph was acquitted of the terrorism related offences, he was immediately placed on a control order and devalued by authorities in the public

realm. Joseph stated that “they just wanted to appear as though there was a legitimate reason to pursue charges against me. The case was falling apart and they were losing...they just had a tantrum and put the control order on me” (personal communication, 28 November, 2014). Indeed, the control order did appear to be intended for public consumption rather than actually protecting the community, especially considering part of the order was that Joseph was unable to contact around a dozen people who had died years earlier. Regardless of their breathing status, many politicians, officials and those in the media still focused on Joseph as someone that the public needed protection from. The day Joseph was charged, which was seventeen months after returning home from overseas, he said “I felt like a tumbleweed in a ghost town. I had just started getting back on my feet. I already had PTSD because of what they did to me overseas” (personal communication, 28 November, 2014). Joseph believes that the control order which included an astounding amount of surveillance, and the several court actions they took against him over the years after his return from overseas, formed part of a deliberate attempt to intimidate him, and make sure that he was dragged through the court system long enough to ensure that he did not have the energy to fight them in a torture case.

Even when Joseph’s torture was raised in the public arena, those in authority were quick to ensure the focus was shifted off their actions and his torture, and onto the actions he was acquitted of, in an act of intimidation and devaluation. One of the more striking examples of intimidation came when Joseph was acquitted. In a final act of unprofessional defiance, former AFP Commissioner, Mick Keelty, stated for a front page article that the jury got it wrong in acquitting Joseph and refused to acknowledge that the AFP’s flawed torture induced ‘evidence’ was rejected by the 12 member jury (Moor, 2006). Keelty even repeated the claims that were proven to be false for the front page article, including accusing Joseph of being a terrorist and claiming that he was going to be of future use to terrorists in Australia (Moor, 2006), both of which have been proven as untrue. Joseph said “it was ridiculous, he was basically saying that the Australian people and the court were stupid and incompetent, when it was them all along” (personal communication, 28 November, 2014).

Similarly, the David Hicks case demonstrated many of the same elements, except authorities appeared to be more overt in their intimidation. Even prior to David's release from Guantanamo, his attempts to be treated as a citizen with rights were removed. This was demonstrated when he sought British citizenship in order for the UK Government to aid his release from Guantanamo.⁸⁸ The same day it was granted, the British Government revoked his citizenship – one can only imagine this was so the Australian Government would avoid further political embarrassment, and to ensure David knew his fate was completely in the hands of politicians (Hicks, 2010). At the time David's plea deal was politically arranged in 2007, a one year gag order was already prescribed and imposed on him. The gag order prohibited him from speaking about any element of his torture or mistreatment to the public, or he would risk two years prison – something he believed was intended to “shut me up” and intimidate (personal communication, 2 February, 2010). It is still unclear as to who arranged for the gag order to be imposed because FOI documents I requested have been stalled after a number of years. However, it was curious that the order lapsed just after the federal election was due to take place in 2007, and Howard was down in the polls partly because of his Government's handling of David's case. David's voice was effectively removed, and he was unable to bring a case against his torturers and those who allowed it to happen, even if he wanted to.

The authorities also placed on a control order on David after he was released from prison in Australia and, in much the same manner as Joseph, it included a prohibition on speaking to people who were deceased. David was told that he could not fight the control order in court, and that it was in his interests to agree with the Australian Government's requirements (Hicks, 2010). As is already noted in an earlier part of this chapter, it did not matter what David did to attempt exposure of what had been done to him, the authorities still managed to remove his voice in one way or another – either by starting court proceedings against him which they did after his book was released (and they subsequently had the books removed from the shelves in the major shopping centres) – or by diverting attention off the crimes committed against him, and focusing on denigrating his personal character so he would not have public support or sympathy.

⁸⁸ Although David is an Australian citizen, his mother was a British citizen, and it was thought that if he was granted citizenship that he would be brought home like other UK citizens.

Both Joseph and David were subjected to oppressive surveillance that could also be classed as intimidation. Both describe having cars tail them, even when they were off to do mundane tasks, like family grocery shopping. Both had to ask permission to stay anywhere but the one registered address. At the time of David's control order, he was living in Sydney and had to seek permission to fly to Adelaide to visit his family (Hicks, 2010). By the time the AFP approved the trip, the tickets would either be too expensive, or he would miss the flights he organised. He risked two years imprisonment for even picking up his father's home telephone if it rang. Every aspect of life was impeded by the authorities at a time when he was attempting to recover from his years of torture and mistreatment at Guantanamo Bay.

Consequently, authorities effectively removed the voices of those who were subjected to torture, not only by starting court cases and engaging in unnecessary surveillance, but also through the emotional pressure they applied to those who were tortured. One of the primary goals of torture is to break people's spirits. To come back to Australia and endure surveillance and endless legal battles that drag on for years can only be described as a form of intimidation to ensure that the torture survivors kept their heads down, and did not even think about questioning their treatment overseas, or seek to hold anyone to account. Indeed, the intimidation of torture survivors appears to be nothing more than the authorities aiding their own cover-up and keeping up appearances in the eyes of the general public by legitimising their own behaviours.

Furthermore, those that spoke out against torture were, and continue to be targeted. When the Abu Ghraib photos were released, US Undersecretary of Defense sent out a memo to officials warning that leaks of the Taguba report would be investigated and possibly lead to prosecution (Martin, 2007). It is reported that at the time, Feith made his office a "ministry of fear" (Martin, 2007, p. 138).

In an attempt to maintain cover-up, all Guantanamo guards were made to sign a confidentiality agreement stating that they would not disclose anything they saw or heard from their time at Guantanamo (personal communication with Brandon Neely, 2 May, 2010). If they did not sign it, they were told that they would not be able to return home (Leopold, 2011a). It has meant that some former guards have been too afraid to come forward publicly. The former guards, who have been brave enough to

tell the world what they saw, have paid dearly. Former Guantanamo guard, Brandon Neely, who was outspoken about the treatment he witnessed, has suffered severely in his personal life after he came forward to defend the rights of those detained. Brandon gave detailed testimony to the media about the atrocities he saw in Guantanamo. Since then, he has received threats and has been forced to go to great lengths to protect his family. He was called a traitor by some of his own colleagues. His career has been impacted enormously, and his life will never be the same again. He said “I would never change speaking out, but I have to do what I can to protect my family. There were plenty of times where I was basically told to keep my mouth shut” (personal communication, 3 September, 2013).

Albert Melise was another former Guantanamo guard who blew the whistle on the treatment of prisoners. Albert detailed how his tasks at Guantanamo included chaining prisoners to the floor, manipulating the temperature of the interrogation rooms, turning the volume of music up and putting on strobe lights to break detainees (Leopold, 2011a). Former Australian Guantanamo prisoner David Hicks gave Albert a letter to send to his father Terry, whilst he was still in Guantanamo. Albert eventually released the letter publicly after David was released, and spoke out about the way prisoners were treated. After this, his career and personal life were affected greatly, and because he was outspoken there are some opportunities that he will never have. He was barred from reenlisting after the military claimed he leaked classified information by speaking about his time in Guantanamo (Leopold, 2011a).

Another former Guantanamo guard who wishes to remain anonymous, and I will call X, has told me of his/her personal struggles with alcoholism and domestic violence since their return from Guantanamo. X told me s/he was too scared to come forward and tell the public about some of the things that they saw and did, and that it is a daily struggle. X said “if I do, I know that my life will be made a living hell...there’s no way they [the government] will ever leave me alone. I am worried about what they will do to my family, my life is already ruined” (personal communication, 16 July 2014). In another conversation X said “I know with all my heart if I would have fully understood the truth then I would have been a better person. For me simply doing my job just doesn’t cut it...I struggle a lot about what I did” (personal communication, 17 July 2014). The fear of speaking out and the impact of the things

they witnessed, and sometimes did, has left huge emotional scars on this person. It is clear that the intimidation felt by the former guards weighs heavily on them, especially when they are not free to speak out.

An enormous amount of intimidation was also placed on officials who blew the whistle over the years. Craig Murray worked as a diplomat for the UK Foreign and Commonwealth Office. When he took the post of British Ambassador to Uzbekistan, he discovered that the British Government was using information gained under torture to attempt to link the Islamic Movement of Uzbekistan to al-Qaeda, a move he said was immoral and illegal (Murray, 2016). After making sufficient noise within the official channels about the use of torture, Murray was subjected to a long line of accusations of misconduct and he faced charges for which he was eventually exonerated (Murray, 2016). Murray was eventually dismissed from his ambassador post in 2004 after a *Financial Times* article quoted him as saying that MI6 had used intelligence gained by Uzbekistan authorities under torture (Murray, 2016).

Former CIA analyst and caseworker John Kiriakou, was also a victim of official intimidation. Despite being forced by the CIA to sign nine non-disclosure agreements which lasted for the duration of his natural life, in 2007, Kiriakou revealed to a US reporter on *ABC News* that waterboarding was used as a form of torture, and in the process became the first US official to publicly confirm its use (Coll, 2013; Kiriakou, 2010). The blowback against Kiriakou was immense: the US Government labelled him a criminal and many in the Agency classified him as a traitor (Coll, 2013). Instead of prosecuting those who engaged in torture, the US Government charged Kiriakou with passing on classified information to a reporter, and he was sentenced to 30 months in prison in 2013. Over the years, Kiriakou and his family have gone through immense upheaval because of the pressure exerted by the US Administration, and the constant worry of ongoing legal action caused significant stress and financial strain (Coll, 2013). Kiriakou stated that he did not go through official channels to raise concerns about torture because it “wouldn’t have gotten anywhere” (Kiriakou, 2010). In a 2013 television interview Kiriakou stated:

I am wearing my conviction as a badge of honour. I am proud that I stood up to our government. I stood up for what I believed was right, conviction or no conviction. I am not a criminal, I am a whistleblower (Kiriakou, 2016).

Rewarding People Involved

The rewarding of people involved in torture, either through silent complicity or overt sanctioning, is significant. As is well established, the chief architects of the US torture program remain unaccountable. The architects, perpetrators and complicit officials of the US torture program are still given more air-time in mainstream newspapers and televisions than the victims of torture. George Bush, Dick Cheney and Donald Rumsfeld are regularly called on to give their opinions about issues that are in the news. More recently, when the political situation deteriorated in Iraq with the rise of the terrorist group ISIS, former leaders from both Bush and Howard Administrations were asked for comment.

Former President George Bush retired from politics in 2009, when Obama took office. Despite his retirement, Bush is a regular public speaker and in 2010 published a memoir defending his torture program (Bush, 2010a). Bush now runs the George W Bush Presidential Center and the Bush Institute which advertises its service as being built “on the leadership principles that have shaped President and Mrs. Bush’s life of service: self-responsibility, the importance of freedom and opportunity for all, and the guidance of a compassionate heart” (“George W Bush Presidential Center”, 2016).

Dick Cheney, who was Vice President until 2009, and is credited with much of the torture program, is still receiving protection from the Obama Administration. Even though Leon Panetta (former CIA director) told a US Senate Committee that the CIA withheld information about the torture program for years on Cheney’s orders, he was awarded an honorary doctorate from the Brigham Young University in 2007 and continues to receive accolades. Cheney is still promoting torture, and defends the decisions he made to inflict suffering on others, including in his memoir published in 2011 (Cheney, 2011).

Former Secretary of Defense Donald Rumsfeld retired in 2006. He released a memoir, which also defended the torture program (Rumsfeld, 2013). Rumsfeld was awarded the “defender of the constitution award” in 2011 by the Conservative Political Action Conference in Washington. As with other former high-profile politicians, Rumsfeld has been awarded several honorary degrees. The list of

Rumsfeld's accolades is quite extensive; they include the Presidential Medal of Freedom, the Ronald Regan Freedom Award, and the Victory of Freedom Award. The front page of his official website has a quote which states "Learn to say 'I don't know'. If used when appropriate, it will be often" (Rumsfeld, 2016).

Cofer Black was the Director of CIA's Counter-Terrorism Center (CTC) until 2001, then State Department Ambassador at large for Counterterrorism until 2004, when he moved into private security companies such as Blackwater and its subsidiaries. Black is currently a Vice President of Blackbird Technologies in Washington, which was acquired by Ratheon, and provides surveillance technology, cyber security and global intelligence systems for the military and private contractors. Black was awarded the National Distinguished Intelligence Service Medal, for meritorious actions to the betterment of national security in America and the George H Bush Medal for Excellence (Greater Talent Network, 2011).

Those who authored the torture memos and provided legal advice regarding torture techniques have been rewarded with prestigious teaching positions, such as John Yoo who is now working in the legal faculty at the University of California in Berkeley (Kulwin, 2013). David Addington, the lawyer to former Vice President Dick Cheney, is now Vice President of Domestic and Economic Policy Studies at the Heritage Foundation in the US. Jay Bybee, one of the authors of the now notorious 'torture memos', and the man who advocated legal immunity for acts that clearly amount to torture, is now a sitting US federal judge (Cohen, 2013). Alarming, he is ruling on cases involving the torture, cruel, inhuman and degrading treatment of US prisoners.⁸⁹

Larry James, a former Army psychologist and former head of the Behavioural Science Division who was involved in overseeing the 'interrogation' of prisoners at both Abu Ghraib and Guantanamo Bay, was appointed Dean of the School of Professional Psychology at Wright State University in 2008. He was selected by Michelle Obama to head a White House Task Force entitled Enhancing the

⁸⁹ In 2012, Bybee oversaw a case where a US prisoner alleged his treatment amounted to cruel and inhuman treatment. In Bybee's ruling he stated that the guards did not have any reason to believe that contraband watch was unconstitutional. The man in question was subjected to 24 hour bright lighting, no mattress to sleep on, body cavity searches, waist chains which prevented him from using his hands to eat, and being placed in an unventilated and hot cell for a week (Cohen, 2013).

Psychological Wellbeing of the Military Family (Greenwald, 2011; The Center for Torture Accountability, 2013).

Those who ran torture facilities have also been rewarded. General Geoffrey Miller, who oversaw prisons such as Camp Bucca, Abu Ghraib, and Guantanamo, refused to appear before a French court and answer for his conduct, but was nevertheless awarded the Distinguished Service medal in the Pentagon's Hall of Heroes ("Critics rage at abuse 'reward' Abu Ghraib chief honoured", 2006). Miller has since retired from the military.

The CIA Station Chief who oversaw the Salt Pit black site in Afghanistan where Gul Rahman died, allegedly of hypothermia, was also promoted (Mayer, 2010). It took two years for the death of the man to come to light, and his family was only informed after reading about it in the newspaper. In addition, the other officials involved have also been promoted inside the CIA (Mayer, 2010). CIA agents who were convicted in Italy of kidnapping are still fighting extradition to serve their sentences. One of the agents, Sabrina de Sousa, is waiting to hear whether she will have to serve her sentence in Italy ("Ex-CIA spy says she is to be extradited to Italy to serve prison sentence", 2016).

In addition, because of the immunity provided to PMSCs in Iraq and Afghanistan, they have largely escaped accountability for their involvement in torture and assassination. The founder of Blackwater, Eric Prince, remains extremely wealthy and has never been held to account. Rather, he is now running another private company called Frontier Services Group, and is said to be making a killing – literally (Scahill, 2014).

Australia

Despite the clear evidence that links members of the Howard Government to the illegal attacks on Iraq and the torture of prisoners in the War on Terror, they are still rewarded and sought after for interviews and comment by the media. This serves as an extension of the distortion of the historical record, where politicians involved in such atrocities are asked to comment on banal social issues and given air-time rather than the victims. Asking perpetrators or those involved in cover-up to speak at social events as distinguished speakers only aids in suggesting to the public that they are

people with credible opinions, and ignores the lies and deceit they told the public whilst in office.

Despite his role in facilitating and covering-up the US torture program, former Prime Minister John Howard has been rewarded in a number of ways throughout the years since his time in office. Not only is he on a taxpayer funded retirement, with a private office in Sydney, he is still awarded accolades in various settings. He has signed with the Washington Speakers Bureau, and is regularly called upon to give his opinions on current events, including the Australian media airing his refusal to apologise for involving Australian troops in the illegal invasion of Iraq (Coorey, 2016). In 2008, Howard was awarded the Irving Kristol award by the American Enterprise Institute due to his “steadfast support of the Australian-US alliance and as a proponent of strong conservative values” (Davies, 2008). The same year he was awarded the Companion of the Order of Australia for, amongst other things, promoting Australia’s interests internationally. One of the most ironic awards conferred on Howard was the Presidential Medal of Freedom which was given to him by George W Bush in 2009 (“Howard to receive US Presidential award”, 2009). In 2012, Howard became a Member of the Order of Merit by Her Majesty, Queen Elizabeth II.

Alexander Downer, who was Foreign Minister during the early years of the War on Terror and misled the public on the treatment of US prisoners, was also given accolades instead of a trip to the Hague. Upon retiring from parliament, Downer was appointed the UN Special Advisor to the Secretary-General on Cyprus until 2014 (Taylor, 2015). After his UN post, he became Australia’s High Commissioner to the United Kingdom and an officer of the Department of Foreign Affairs and Trade (Australian Government, 2016). He also holds an Order of Australia medal. The media still gives him air-time to spout pro-torture rhetoric and he continues to denigrate torture survivors.

Former Attorney-General Philip Ruddock remained a sitting member of parliament until his retirement was announced in 2015. Ruddock was the Attorney-General who stated that sleep deprivation was not torture and sanctioned the internationally condemned US Military Commissions system. He was appointed to a UN position as Australia’s first Special Envoy for Human Rights to promote Australia’s candidacy

to the United Nations Human Rights Council in 2018–2020 ("Veteran Liberal MP Philip Ruddock to retire from politics after 42 years", 2016). Ruddock has also chaired the Parliament's Joint Committee on Human Rights. He still wears his Amnesty International pin to his press conferences.

The former Chief of the Defence Force, Peter Cosgrove, who was made aware of the torture of prisoners at Abu Ghraib, and signed off on minutes that contained information concerning serious breaches of international law, yet chose to hide them from the public in order to protect the US and UK from embarrassment (Cosgrove, 2004), now holds the highest office in Australia – the Governor-General. Working his way up the ranks over the years, His Excellency General the Honourable Sir Cosgrove AK MC, was even bestowed a knighthood (Governor-General of the Commonwealth of Australia, 2016).

The inquiry into the bungled Haneef case exposed some of the Australian Government officials who were involved in the equally bungled cases of David Hicks and Joseph Thomas. In particular, former AFP Commander Ramzi Jabbour was singled out as having lost objectivity in the Haneef case (Clark, 2008, p. x). It is little wonder that enquiries were prevented from examining his role in David and Joseph's cases given Jabbour's deep involvement with the attempted prosecution of those matters. Despite being named in the report, in 2015 Jabbour was promoted to become Deputy Commissioner of the AFP (Keenan, 2015). The senior Australian Government prosecutor in the Haneef case, Clive Porritt, was also named as being responsible for giving advice that should not have been given (Clark, 2008). Despite being named in the report, no one was charged with misconduct, or held to account.

Former ASIO Director-General of Security, Dennis Richardson, was the Australian Ambassador to the US at the height of the first War on Terror, and FOI documents demonstrate that he was deeply involved in negotiations around Habib's 'hypothetical' rendition to Egypt, as well as other Australian's treatment whilst in Guantanamo Bay. Since his US Ambassador post, Richardson has been promoted to the Secretary of the Department of Foreign Affairs and Trade, and is now Secretary of the Department of Defence. Richardson was appointed as an Officer of the Order of Australia for his service to foreign policy and national security. Duncan Lewis, who was the Special Operations Commander from 2002–2004, and a National

Security Advisor in the Department of Prime Minister and Cabinet (2008–2011) and Secretary of the Department of Defence (2011–12), has now moved up to the position of ASIO director.

Federal Police Commissioner Michael (Mick) Keelty, who told the public that the jury was wrong in acquitting Joseph Thomas, and relied on evidence obtained under torture has now retired, but was appointed an Adjunct Professor at Charles Sturt University and the Australian National University. He is a member of the International Advisory Board for the Australian Research Council Centre for Excellence in Policing and Security, and was appointed as a part-time commissioner for the Crime and Misconduct Commission (Remeikis, 2013). He was awarded the Order of Australia medal in 2011, and a series of other accolades including the Australian Police Medal (Australian Government, 2011).

Since his time in Iraq, George O’Kane, the Australian Army officer who provided legal advice about the torture techniques used at Abu Ghraib, and knew about ghost prisoners being hidden from the ICRC, has worked his way up the ranks to be promoted to Lieutenant Colonel, and is now the Chief Legal Officer for the Office of the Chief of Army. O’Kane is now in a position where he vets FOI requests pertaining to matters that relate to torture.

Journalists and Academics

Then there are the journalists who for years reported US and Australian Government press statements, with clear bias, which were subsequently shown to have been false and misleading. Leigh Sales who wrote the inaccurate and biased account of David Hicks’ story is still a prominent ABC journalist and heads up the ABC’s *7.30 Report*. Helen Graswill who produced the skewed *Australian Story* program on the ABC which misrepresented David Hicks is still working for them as a “senior journalist and Producer”, and the *Australian Story* website boasts that she obtained his “exclusive interview”, which is false (Australian Story, n.d.). Sally Neighbour who produced the *4 Corners* story on Joseph Thomas which was used in the government’s case against him is still working as a freelance journalist and still regularly writes columns in newspapers. Neighbour has been awarded several Walkley Awards for “excellence in journalism” (Neighbour, 2011). Despite these

ABC journalists being proven incorrect on a number of points, not one correction or apology has ever been issued to the torture survivors they denigrated.

The shock-jocks whose work is also detailed in the above chapter, continue to spread the same opinions, and they have also never apologised for or corrected their false accusations. Miranda Devine and Andrew Bolt continue to have their own columns and are protected by the corporate might of News Limited. Bolt has even been rewarded with his own television program on Channel 10, where Miranda Devine and others regularly appear on a Sunday morning.

Many journalists also continue to be rewarded by being fed stories by their trusted government sources. Certain government officials have favourite journalists or newspapers that they release stories to; those which they know will report in the narrative they have put forward – especially *The Australian* under the Howard Government. This has remained particularly apparent in relation to stories on Guantanamo, where the same journalists appear to write many of the stories printed in Australia and in the US, such as Carol Rosenberg. In other words, it pays for the journalists to print what their government sources want them to; they will get more scoops, and be the go-to avenues for many media stories.

Academics that defended the torture of people they deemed as terrorists are still able to spout their beliefs in public lecture rooms and classrooms around the country with no challenge. For example, the St James Ethics Centre hosted a pro-torture lecture by former Bush speech writer, Marc Theissen at the Festival of Dangerous Ideas. The Executive Director of the Ethics Centre did not think there was anything wrong with promoting pro-torture opinions to the general public, and neither did he think it was necessary to have the opposing view aired, even when he acknowledged that more people walked out of the lecture theatre holding pro-torture views than when they walked in (personal communication with Simon Longstaff, 30 October 2011). The St James Ethics Centre refused the opportunity to have a lecture on the problems with torture, even though there is ample evidence that points to an increasing pro-torture majority in the general public (Pew Research Center, 2016). Inevitably, those with pro-torture stance have been rewarded with public platforms that reinforce the violent actions of the state. Those who push and facilitate pro-torture rhetoric still remain largely unchallenged.

Conclusion

This chapter presented evidence of the extensive use of techniques to reduce outrage in relation to the injustice of torture in the War on Terror. The methods of inhibiting outrage were used extensively by authorities, and revealed in all mainstream newspapers examined. There was a large overlap in the use of techniques; however, the most common tactics appeared to be cover-up in the first instance, then the use of devaluation and reinterpretation. Despite the usual problems with exposing cover-up given that torture is conducted in secret, the evidence was widespread, and many instances of US and Australian officials covering their tracks were noted, including US agents and officials destroying evidence of torture and hiding evidence from the public, such as the destruction of torture videotapes, denying FOI requests, or only releasing heavily redacted documents. The use of cover-up was also apparent in relation to the Australian military's involvement in torture, and the lengths that Australian officials went to in order to preclude the truth from reaching the public; including preventing George O'Kane from testifying before US and Australian Senate hearings, preventing information about the death and mutilation of prisoners from being released to the public, and protecting the US and UK Government's from embarrassment by hiding evidence. The Australian Government also failed to investigate the torture of its own citizens in Guantanamo Bay and elsewhere, instead relying on diplomatic assurances, not reading reports, and failing to ask US authorities any questions they did not want to know the answer to. Evidence that served to cover-up torture from the mainstream public was also noted in the form of reinterpretation techniques, such as playing semantics to confuse the public as to what actions constitute torture.

Evidence pointing to the devaluation of torture victims and survivors was voluminous, and many Australian newspaper articles focused on denigrating the personal character of those subjected to torture, rather than the serious crimes against humanity committed against them. Torture victims were labelled as liars, terrorists and dangerous individuals and they were effectively cast as social pariahs which served to inhibit outrage at their suffering. Torture testimony was discredited by both US and Australian officials, and articles demonstrate that officials went largely unchallenged in their official statements about events. Official narratives were given

disproportionate coverage compared with that of the torture victims. Commentators that were classed as more 'liberal', and media platforms that are traditionally considered to be more reliable, also engaged in the denigration of torture victims, which served to discredit torture testimony. This denigration is inevitably worse, given that it is normally expected that people will be provided with more reliable and accurate information from these forums.

The reinterpretation of events was also stark. There were many ways in which language and propaganda was used to promote a particular narrative, and to shift the focus off the crime of torture and the suffering of the victims. This was particularly the case in relation to Guantanamo Bay, and the way the Australian authorities used US wording for press releases, and the media followed suit in printing the official version of events. Australian newspapers regularly reported official narratives and disproportionately aired officials' claims about torture, or focused on the accusations against victims, even when they were found to be false. It is also clear that Australian newspapers omitted large amounts of material from their stories, such as the ways in which 'confessions' were obtained, and therefore they silenced the voice of the survivor.

There was also a great deal of evidence that official channels were used to give the appearance of justice, or to prevent the torture testimony of survivors from being heard. Enquiries were limited in scope and often were carried out by those implicated in torture, or the results were censored and kept from the public, such as the investigation into Mamdouh Habib's torture, and the NCIS report into David Hicks' torture. Even when reports substantiated the victims testimony, there is evidence that the Australian Government lied to the public about the contents, or failed to read the reports, and simply relied on talking points provided by US officials. In the cases where investigations were not established, the papers reported the official version of events and instead focused on government enacted legal cases, or initiated actions like control orders to shift the focus off the torture that had occurred, which served to reinforce official narratives, and in the process dampen outrage.

The use of intimidation was also apparent and widespread. Many torture survivors have been subjected to treatment from authorities that can only be described as

intimidation, such as control orders, gag-orders and protracted legal cases. The use of surveillance and extreme forms of emotional stress were exerted on victims to ensure they had no energy to fight torture cases. In addition, quite a number of people involved in the torture program were rewarded for their involvement, and no one has been held to account. Officials both in the US and Australia have either been promoted to positions of power, or are still called upon to give comments about public events, giving further legitimacy to their behaviours and involvement in covering-up or acquiescing in the US torture program. Whistleblowers on the other hand, continue to be persecuted and are afraid to speak out because of the intimidation they feel. The results are therefore concerning.

In the end, it appears that only a few lower ranking soldiers were prosecuted in order to give the appearance of justice (Brooks, 2015). For example, years after the event only a few soldiers were found guilty of dereliction of duty and conspiracy to mistreat prisoners at Abu Ghraib prison (Brooks, 2015). This is the exception that proves the rule: outrage management succeeded in protecting those at the top.

Overall, the Outrage Management Model (Martin, 2007) was successfully used by authorities in a number of ways over the ten year period to stifle outrage at the injustice of torture. Many people knew what was really happening to prisoners, but were too afraid to come forward. Guantanamo guards were forced to sign non-disclosure agreements and risk prison for speaking out, and the peer pressure that came from their fellow soldiers pressuring them to remain loyal to the military, resulted in many feeling intimidated, and remaining quiet. Whistleblowers were prosecuted and punished for speaking out. Conversely, those who were heavily involved, acquiesced, engaged in cover-up, or toed the official lines were promoted, and now have positions where they can continue to aid the cover-up of torture. The many examples presented here show the incentives for covering-up and protecting the interests of those who perpetrated torture in the US, UK and Australia.

Propaganda

There is also clear evidence of the circumstances outlined in Herman and Chomsky's (1988) Propaganda Model introduced in Chapter One. The use of techniques, such as reliance on people deemed as experts, was apparent in the reporting on torture in

Australian newspapers. Numerous articles demonstrated that the same individuals who spouted official pro-torture propaganda were asked to provide comment on the situation of people held in the War on Terror. For example, John Howard, Alexander Downer and Phillip Ruddock were called upon to provide comment about the situation of Australian's held in Guantanamo on abundant occasions, and were considered to be qualified to give opinions on the treatment of prisoners. However, besides the fact they never visited Guantanamo or black sites, documents showed that they essentially protected the US Government from embarrassment, shared speaking notes, relied on diplomatic assurances and even failed to read reports regarding the treatment of prisoners. There were also numerous examples of so-called 'experts' being called upon to define torture in the public realm, or, more frequently to redefine torture as 'enhanced interrogation', etc. in order to stifle outrage by stating that these techniques were not the same as torture. The same air-time was not provided to actual experts who are familiar with internationally recognised definitions that include cruel or inhuman and degrading treatment, and those who would have clearly stated the US Government was engaging in torture.

The Propaganda Model (Herman & Chomsky, 1988) also points to the use of 'flack' as a means of those in power controlling the narrative. The newspaper articles examined demonstrated this in several ways. Even if commentators or journalists printed stories saying that torture was wrong, in most cases, there appeared to always be a qualification in relation to the personal character of the person who was tortured, because of the fear of flack. For example, a number of articles concluded that torture was wrong, but there was always either an allusion to, or blatant comment about the guilt or innocence of the person involved; especially when it came to the three Australian's who received the most coverage in Australian newspapers – Joseph Thomas, David Hicks and Mamdouh Habib. If a forum was giving air to their torture testimony, it was immediately attacked, and the narrative was changed, such as the script changes in *Australian Story*.

In addition, and to a large extent, newspaper articles demonstrated that holding an anti-torture stance in relation to individuals in US custody was seen as akin to supporting terrorism. This also correlates with the Propaganda Model (Herman & Chomsky, 1988) in the sense that being seen to criticise the actions of the US or

Australian Government or their agents in relation to torture was depicted as treacherous. For example, it was labelled “un-Australian” to question the way Australian troops treated detainees; in this instance when they held Afghan prisoners in dog cages (AAP, 2008, p. 1). Therefore, papers were keen to focus on what the individual was accused of, rather than the actions perpetrated against them as a means of controlling the narrative, which focused on the supposed terrorist threat, rather than the crimes of torture committed against those detained.

The construction of torture became a discussion about whether a person was deserving of torture, and their alleged actions therefore became central to the articles examined. Torture victims and survivors were mostly cast as ‘others’ who were accused of serious crimes, and therefore the framing of the stories meant it was of little relevance whether or not they were tortured. The weight given to the torture of those detained was far less than the weight given to officials who accused torture victims of lying, or being terrorists and dangerous. All newspaper forums examined inevitably fell into this trap, as many stories were either written by US correspondents then reprinted in Australian papers, Australian journalists were ill-equipped or unable to research the story comprehensively, or Australian Associated Press (AAP) releases were simply regurgitated onto every media platform without any analysis of the official line.

Backfire, Denial and the Annihilation of Memory

There is another element to the results that is equally troubling, and that is the fact that many of the violent behaviours perpetrated against the survivors and victims of the War on Terror did not backfire on those who carried them out. Even though most of the preconditions of backfire were present in many of the above cases, it rarely occurred. There were countless examples of letters from the public printed in newspapers that were hateful and venom filled towards torture victims/survivors, including letters that called for their deaths and repeated claims made by US and Australian officials such as “they [Guantanamo prisoners] hate us” (“Your say: Letters to the Editor”, 2009).

The only major backfire occurred in relation to the Abu Ghraib photos, but even then, only a few lower-level soldiers were prosecuted, the higher level officials and

contractors escaped any real ramifications. The real damage of the Abu Ghraib photos was in relation to US reputation, particularly in the Middle East (Gray & Martin, 2007). However, recent studies suggest that overall, the image of the US remains positive globally, despite the US Government's use of torture (Pew Research Center, 2015). There was also some evidence of backfire in relation to David Hicks' imprisonment in Guantanamo. Cables generated between US and Australian officials state that the US handling of the case was "damaging Howard politically" (Owens, 2007). However, while there was some backfire against Howard, it was not solely due to David's torture – rather, newspaper articles reflect that many people found David's indefinite detention and being held without charge indefensible.

More generally, there are not any major protests in the street calling for accountability for torture, and even members of the public who do care about the injustice, are not engaged in calling for accountability on a broad scale. There are small pockets of advocates who continue to call for accountability, however, there are no major calls for members of the Howard Government to be formally investigated and held to account.⁹⁰ In the US there appears to be a little more engagement, however, like Australia, there is a lack of political will to hold officials involved in the torture program to account. The same situation is apparent in the UK where, although Tony Blair has been questioned about his involvement in leading the country into the invasion of Iraq, the focus was not the torture of prisoners.

Cohen's (2001) theory on denial may provide some explanation of the lack of widespread blowback against the US, UK and Australian Governments. As explored briefly in Chapter One, people prefer to deny or ignore that atrocities are taking place through the denial of responsibility, denial of the injury, by denying the victim appropriate status, and appealing to higher loyalties (Cohen, 2001). The material presented in this chapter reflects the successful deployment of these methods by US, UK and Australian officials and their agents, whether through the denigration of torture victims and survivors, or the use of the national security narrative to appeal to

⁹⁰ For example, Independent MP Andrew Wilkie has pushed for Howard to be investigated for his involvement in involving Australia in the Iraq invasion on false pretences, however, it was not widely supported, and there was no political will (Coorey, 2016). There was a push for the torture of Australians to be investigated, and a letter was sent to former Prime Minister Julia Gillard calling for an investigation, however, she refused in 2010 (The Justice Campaign, 2010).

higher loyalties and nationalistic aims. The torture of people in the War on Terror was habitually denied by authorities, and subsequently cast as someone else's fault, like a 'few bad apples', or framed as not that bad to begin with. Victim's pain and suffering was rarely acknowledged and they were not only refused victim status, but in most cases, their experience remained completely hidden from the public. Some people died in black sites and prisons, only to be ascribed criminal status by authorities, and their deaths labelled an act of warfare. Others were kept in incommunicado detention and denigrated to the point that anything they said upon release was already framed as a lie.

Even more disturbing for the victims, is the collective annihilation of their memory and experience of torture in the public realm, whereby their experience was either blatantly denied or reinterpreted to the point that their torture was regarded as a fairy tale. The result is devastating, not only for the survivors personally, but also the broader community in the sense that historical record remains distorted. The media still provides public platforms to those involved in perpetrating or covering-up torture in order for them to reinterpret events and discredit the torture victims' experience. This phenomenon reinforces collective denial and a lack of action to counter the injustice. Collective denial serves the political structure because it keeps the focus on the victims as deviant and deserving of torture, rather than the perpetrators. The result manifests in a lack of outrage in the general community, to the point where the atrocity is either ignored, minimised, or no steps are taken to address the injustice.

Another explanation for the lack of blowback is the broader political situation that was operating at the time, and the fact that there were much more powerful forces at play. The following chapter explores the network of support for state inflicted torture, including the ideological, political, economic and practical supports, such as the politics of torture and terrorism and the notion that torture carried out in the War on Terror is intimately tied with the workings of the deep state. In particular, Chapter Six examines the broader issues in operation in light of research into preconditions for torture and agents operating with impunity.

Chapter 6: Underlying & Structural Support for State Torture

But now just have a look at this apparatus... up to this point I've had to do some of the tasks by hand, but from now on the apparatus works entirely by itself... There would be no point in announcing [his sentence] to him. You see, he gets to know it in the flesh – The officer, judge and executioner explaining to the voyager the torture device used to punish and kill convicts in Franz Kafka's Penal Colony (Kafka, 1992, p. 128 & 132).

Chapter Five provided extensive evidence of governments and other perpetrators inhibiting outrage at the injustice of torture through the tactics of cover-up, devaluation, reinterpretation, the use of official channels and the intimidation or reward of people involved. In the process of analysis, it became clear that the outrage management tactics were supported and enabled by a broader political structure, and other state created apparatuses, that further aided in the cover-up, denigration and intimidation of torture victims and survivors, including discordant political rhetoric related to torture and terrorism, the rise of militarism, and the surveillance state. Torture that occurred as part of the War on Terror was much bigger than the individual men women and children who became the victims and survivors. Figure 17, which is presented on the following pages, demonstrates the vast networks that work collaboratively to provide ideological, economic, practical or political support in relation to the practice and cover-up of torture. The table provides a summary and overview of issues that are explored in the chapter.

Accordingly, this chapter explores some of the social and political conditions that give rise to torture and impunity including the normalisation of violence perpetrated by the state, divisive and manipulated political rhetoric to create an enemy 'other', increased militarisation and surveillance, and the systemic mechanisms that support torture occurring with impunity. The underlying politics of both torture and terrorism support the tactics of inhibiting outrage at the injustice of torture by providing ideological and political support for the perpetration of torture. This is particularly the case in light of the manifestation of the deep state, which is unresponsive to

civilian leadership. The concept of the deep state is crucial to recognise when examining the issue of torture, in order to understand the pillars of support for torture in the War on Terror, and the effective way the system works to carry out and cover-up torture by creating a network of reliance economically, practically and/or politically. Therefore, the secret workings of the state on a geopolitical scale are highly relevant to understanding torture in the present context, including the political narratives around terrorism, the role of the national security state and the intelligence community, and deeply entrenched militarism and reliance on war.

Figure 17 - Underlying Systems and Supports for State Inflicted Torture

Support Mechanism	Outrage Management Tactics Primarily Supported	Functions	Process	Outcome
Political Rhetoric	Mainstream Cover-up Devaluation Reinterpretation Official Channels	Ideological and Political	<ul style="list-style-type: none"> Lying to the public about torture and victims, e.g. saying that prisoners are being treated humanely, or that investigations have taken place Officials reinterpret torture, and give legitimacy to the treatment of those deemed ‘others’ Focus on minority feature (religion, ethnicity) to create division Keep public occupied in partisan debates rather than seeking to understand structural problems 	<ul style="list-style-type: none"> Public believes that torture is not occurring. Even if some do, enough is done to minimise outrage Victim and their testimony is devalued Society divided The creation of an enemy Torture and otherness becomes ‘normalised’
Torture as a Political Tool	Reinterpretation Intimidation Mainstream cover-up	Ideological, Practical and Political	<ul style="list-style-type: none"> Torture used as a mechanism of power, and the state’s right to punish normalised Casting actions of officials as noble to save ‘others’ from their own behaviour; torture is moralised Torture used as a weapon to defend the states interests (maintaining control of empire) 	<ul style="list-style-type: none"> Creates the enemy Actions of the authorities deemed as legitimate and victim blamed Torture normalised State protects its power as a function of empire
Terrorism as a Political Tool	Reinterpretation Devaluation	Ideological and Political	<ul style="list-style-type: none"> Calling violent acts terrorism when they are not and conversely legitimising state sanctioned violence Creating a climate of fear Focus on minority features (race, ethnicity) Divert attention away from underlying causes for political violence, & create support for the cycle of violence Pass laws to target non-state political violence, minorities and whistleblowers (criminality) Focus on national security 	<ul style="list-style-type: none"> Enemy is created State is cast as the protector, victims as perpetrators State inflicted violence is considered legitimate The individual’s race/religion is cast as the ‘problem’, in the process taking focus off injustice of state-inflicted violence
Watching Torture Recreationally	Reinterpretation Devaluation	Ideological and Political	<ul style="list-style-type: none"> State inflicted violence shown in recreational contexts (e.g. television shows that depict torture as effective, and ‘fun’) Presents misleading narratives (e.g. torture is the only way to protect the public) National security sold as more important than torture prevention 	<ul style="list-style-type: none"> Legitimises actions of the state in the eyes of the public Moral disengagement Torture normalised Reporting skewed Weight not given to torture survivor’s testimony (e.g. fictional characters)

Deep State (operates regardless of who is voted in & doesn't respond to civilian leadership)	Cover-up Official Channels Intimidation/rewarding people involved	Practical, Political and Economic	<ul style="list-style-type: none"> • Creation of covert torture programs • Interests of specific people and groups are served (e.g. shuffling people through different institutional and private corporate positions to maintain cover up and secrecy) • Network of individuals becomes reliant on supporting each other's work (enmeshment) • Promote intelligence gathering and control narratives around torture 	<ul style="list-style-type: none"> • Torture hidden from public view • Network of reliance and cover-up created • Those involved in ordering and carrying out torture are protected by individuals and organisations and are unaccountable • Those involved in torture rewarded/promoted – actions are legitimised
Militarism	Cover-up Reinterpretation Official channels Rewarding those involved (e.g. economic rewards)	Practical, Ideological, Economic and Political	<ul style="list-style-type: none"> • Creation of vast global networks that support torture • Privatisation of the military (involving companies that politicians have financial interest in) • Creation of bases that assist in the facilitation and cover-up of torture • Creation of close links between government, military companies and the media (e.g. former government staff now sitting on the board of weapons manufacturers) • Create economic dependence through military spending agreements (including purchase of weapons) • Creates close political ties so cover up can occur 	<ul style="list-style-type: none"> • State-inflicted violence legitimised • Government allegiance is to a foreign power and economic interests, rather than torture victims (enmeshment) • Consistent manufactured messages that are conveyed to the public supporting specific interests • Economy reliant on war and violent militarised conflict • Torture facilitated through nation hosting bases • Creates division (Promotes ideology of legitimate violence and 'us and them')
Surveillance State	Cover up Reinterpretation Intimidation/ Rewarding those involved	Practical, Ideological, Economic and Political	<ul style="list-style-type: none"> • Surveillance and prosecution of whistleblowers • Intimidation of torture survivors • Surveillance of mainstream public • Creation of surveillance operations involving torture and extrajudicial killing in other countries (so the host state won't be able to criticise their actions) • Military engagement in PSYOPS (e.g. sock puppets to give the appearance of pro-torture opinion) • Creation of lists that designate those critical of state actions as terrorists 	<ul style="list-style-type: none"> • Whistleblowers too afraid to come forward • Chilling effect on freedom of speech • Torture survivors too afraid to tell their stories • Pro-torture attitudes • Torture facilitated through host nation (e.g. Pine Gap providing intel for drone strikes and torture programs) • Enmeshment

The Politics of Torture

Ignorance and obscurantism have never produced anything other than flocks of slaves for tyranny – Mexican Revolutionary, Emiliano Zapata Salazar (as cited in Myers-El, 2008, p. 158)

Michel Foucault's (1979) formative work *Discipline and Punish*, provides a thought-provoking historical account of the way in which torture switched from being a tool used by the state in providing an outward and visible display of power, to a more insidious, silent and concealed method of control. Foucault describes how, prior to the nineteenth century, the public torture of the body in the town square had a political function (Foucault, 1979, p. 25). Torturing the body publicly was as tool whereby the body served the social function of punishment for violating the laws of the state, and an outward representation of the loss of wealth or rights (Foucault, 1979, p. 15). The public 'spectacle' of suffering functioned as the outward display of the state's ability and power to enact penal punishment. However, the use of torture as a public spectacle changed after it was realised that the 'criminal' became the object of either pity or admiration (Foucault, 1979, p. 9). This shift signalled the onset of the technology of control that sought to dehumanise the tortured individual. Punishment inflicted by the state became a matter that was conducted behind closed doors. As Foucault describes:

The apportioning of blame is redistributed: in punishment-as-spectacle a confused horror spread from the scaffold; it enveloped both the executioner and the condemned; and, although it was always ready to invert the shame inflicted on the victim into pity or glory, it often turned the legal violence of the executioner into shame. Now the scandal and the light are to be distributed differently; it is the conviction itself that marks the offender with the unequivocally negative sign: the publicity has shifted to the trial, and to the sentence; the execution itself is an additional shame that justice is ashamed to impose on the condemned man; so it keeps its distance from the act, tending always to entrust it to others, under the seal of secrecy. It is ugly to be punishable, but there is no glory in punishing (Foucault, 1979, pp. 9-10).

Bureaucratic concealment of punishment therefore became the preferred method for the state. Prisons were built, the walls painted black or white. If prisoners were executed, it was done behind closed doors, their faces were covered with shrouds, and the executioner no longer touched the body. The body became an object of what Foucault describes as ‘suspended rights’, and punishment became an instrument of state to deprive the individual of liberty whilst keeping at an arm’s distance. Punishment is still inflicted on the body, but in more routinised practices such as food rationing, sexual humiliation and solitary confinement.

Most importantly for Foucault, the body becomes the strategy in the exercise of power – and power is one of the conditions of knowledge (Foucault, 1979, p. 27). Foucault is concerned here with the body politic as “a set of material elements and techniques that serve as weapons, relays, communication routes and supports for the power and knowledge relations that invest human bodies and subjugate them by turning them into objects of knowledge” (Foucault, 1979, p. 28). The manifestation of this is the state’s right to punish, and the body of the condemned person as a manifestation of a lack of power. Torture serves as an activation of the power of the sovereign through punishment. The condemned becomes the common enemy of the society – hence, rather than torture being cast as an exercise in punishment, the state is defending the society from the individuals who seek to attack social rights, as is demonstrated with the torture of those deemed terror suspects. The punishment then is cast as a result of the law being applied in a gentle and humane way, and in the interests of the society. Indeed, the narrative must follow that society sees punishment as natural and in their own interests (Foucault, 1979, p. 109).

Consequently, prisons were framed as reformatories or places where an individual could go to correct their behaviours – as docile bodies that can be transformed. Foucault states that the power of discourse around the individual was crucial. Rather than being perceived as the state punishing the individual, the response of the state was a reaction to the individual (Foucault, 1979, p. 130). It was because of *their* behaviour that the state wielded the power to punish. This of course is dependent on the society being kept in a state of automatic docility, cogs in the machine to maintain social order and discipline being the essential element.

The way this manifested in the War on Terror is stark. Not only have the bodies of the tortured men been purposely hidden from the public, they have been tortured in black sites out of the reach of any assistance, and simultaneously blamed for their own torture in the public space. Either through official comments that ascribe blame for their torture as being a consequence of their supposed dangerous intentions towards Westerners, or the denigration of personal characters, their torture has been framed as necessary to protect the public from a supposed threat, and they have been cast as unworthy of humanity.

When Bush's former speech writer Marc Theissen (2011) gave a speech at the Sydney Opera House promoting the use of 'enhanced interrogation', he stated that one man in particular was unperturbed by the waterboarding he endured. In fact, Theissen (2011) argued that he was grateful to be waterboarded by the CIA because, he said, it took a moral weight off his shoulders. Theissen's (2011) description of this man's torture as an act of moral salvation and liberation cast the actions of the US Government as righteous and all powerful – as if it were an act of God to rid the man of his demons and protect the public from an evil that knows no bounds. Theissen (2011) asserted that the man who was waterboarded 183 times thanked his interrogators for torturing him, and essentially cast his torture as a liberating experience. The representation of this man's torture was akin to the Salem witch trials when priests would torture women to death to lift the weight of the devil off their shoulders. Theissen (2011) reframed the torturers as divine messengers who were doing the tortured man a favour by near drowning him. The man who was tortured not only had his voice removed during the torture, he was also ascribed the position of a person that wanted and needed his behaviour reformed, and the agents of the state were the saviours to help him do it.

These narratives are underpinned by the ideology that is reliant on a community believing they need to be protected from an enemy, and of a people that are morally righteous, who are absolutely sure they know right from wrong, and they are right and everyone else is wrong. This ideology unites people in support of state sanctioned violence, and sees state violence as necessary for their protection and the right thing to do, and therefore legitimate. History has seen this in many forms and the hunt for terrorists in modern times has chilling parallels with the witch trials of

centuries ago. For example, the accused person is “assumed to be guilty without proof, secret accusations are accepted, evidence against the accused is often falsified, torture can be used” (Rapley, 2007, p. 4). Witch hunts are not solely an activity, but a state of mind that develops when society is under great stress and fear, such as after the events of 9/11 (Rapley, 2007). Society is inevitably cast into roles of good and evil, where the witches – or now terrorists – are hunted by the force of good, whether by the church in the case of witch hunts, or the military and government agents in the case of terrorists. The dynamics and characteristics are largely similar; the witches were cast as evil and, as such, demanded to be hunted down and tortured into providing false confessions that sometimes resulted in death, and authorities fought tirelessly to prevent the public from finding out their errors, which were many (Rapley, 2007). Robert Rapley (2007) points out that, following this narrative, rendition and torture have therefore been conducted by honourable people and their actions construed as necessary to protect the community in the post 9/11 era (p. 251). Certainly, this was the narrative set by Theissen (2011) in his speech to the Sydney Opera house, and by countless other officials and in newspaper articles that described the actions of the Bush Administration as “heroic” and that the reason why Bush “upsets his opponents” is because he is a champion of democracy for “every man and woman” (“Bush understands the issue of our age”, 2009; Fournier, 2002).

Similarly, in her book *Torture and the Twilight of Empire*, Marnia Lazreg (2008) argues that occupying nations justify their use of torture as regrettable, but as a life-saving tool necessary to protect Western civilisation from those who challenge their rule. Tracing the justifications used by the French in Algeria to the justifications of torture in the War on Terror, Lazreg (2008) suggests that the moralisation behind the case for torture was reinforced by institutions like the church, and the moralising use of language was called upon to provide validation for torture (p. 237). Seeing torture as the moralistic ‘lesser evil’ was one way of justifying the use of torture on a broad scale and, just like Theissen’s remarks at the Sydney Opera House, the same propaganda of torture being carried out for a higher moral purpose has been echoed by many politicians and theorists both historically and in the War on Terror (Frow, 2007; Lazreg, 2008).

But it is the notion that torture cannot be separated from the state's geopolitical ambitions that is most significant for this analysis. As Derrida's (1976; 2001) work suggests, the empire building exercises of the state are inevitably backed by moralistic and nationalistic ideology that sees torture as necessary to protect the power of the state. Lazreg states:

The line between democracy, a major justification of torture, and empire blurs. Torture becomes a weapon with which to defend imperial politics. Thus, torture establishes continuity between France in Algeria, and the United States in the World. Torture is a cornerstone of the structure of power and geopolitics (Lazreg, 2008, p. 252).

This played out in several ways in the War on Terror, including the use of the 'human rights' narrative to secure the actions of the state. Certainly, torture in the War on Terror was never about extracting information or about saving lives. Torture was carried out as a function of the state to maintain its power and control by declaring a state of emergency, militarising the population, then moralising torture and the punishment of bodies as a necessary act to protect the greater good. The War on Terror became a war *of* terror (Lazreg, 2008, p. 269).

The Politics of Terrorism

There is a temptation that seeps into the souls of even the most righteous politicians and leads them to bend the rules, and eventually the truth, to suit the political needs of the moment – Michael Ignatius (as cited in Kassimeris, 2008, p. 4).

International torture prevention organisations contend that the general political environment is an important factor in the prevention of torture (Office of the United Nations High Commissioner for Human Rights et al., 2010). The risk of torture is increased if political rhetoric that casts the state as under severe security threat from 'others' such as terrorists is used. This inevitably leads to the acceptance or indeed, justification of torture (Kelman, 2005). Occurrences of torture are also increased if there is no political will to hold perpetrators to account, or there is a general propensity for state leaders to play the bystander role, and excuse or condone torture,

whether explicitly or implicitly (Basolglu, 1993). The narratives set by powerful entities like the government play a central role in this.

Indeed, the politics of the state plays a central role in the narrative and framing of the issue of torture in the War on Terror, particularly when dealing with those who carry out violent acts for political purposes. The political aftermath of the Madrid bombings demonstrate this point perfectly. On the 11 March 2004, people strapped with bombs caused the death of 191 people and injured 1,900 others (Kassimeris, 2008, pp. 1-2). The criminal act took place three days before a general election in an attempt to influence the outcome of the elections (Kassimeris, 2008, p. 2). George Kassimeris (2008) describes that the Partido Popular (PP) right wing government instinctively blamed Euskadi Ta Askasuna (ETA), the Basque separatist movement, which had been performing terrorist acts in Spain since the 1970s (p. 2). However, to avoid the attacks being affiliated with Spain's involvement in the Iraq war, which 90 per cent of the population disagreed with, the PP began an "audacious exercise in spinning and political manipulation" (Kassimeris, 2008, p. 2). Aznar personally called the editors of the major newspapers, assuring them that the attack was carried out by ETA, and the papers ran with it. Unfortunately for Aznar, the day before the election, a video was posted showing three masked men claiming responsibility for the attacks because of Spain's collaboration with "that criminal Bush and his allies", and the "crimes" Spain had committed in Iraq and Afghanistan (Kassimeris, 2008, p. 3). Aznar was voted out of government at the elections because he played politics with the terrorist attacks and sought to capitalise on people's fear (Kassimeris, 2008).

Fear is certainly one of the most powerful human emotions and at its peak, all rational thought and reason becomes secondary to the emotional impulse. Fear has long been used as a tool to achieve political aims, either by those who are carrying out state sanctioned violence, or non-state sanctioned political violence. Political violence relies on the fear response to achieve its goals (Calcutt, 2014). Fear in the general community was widespread after 9/11, and officials reinterpreted non-state actor political violence as attacks on freedom and democracy (Carney, 2006; "Treading wearily with Indonesia", 2002). The fear was not only in relation to the criminals who attacked New York and the Pentagon on 9/11, but also the response to that, which caused large numbers of civilian casualties in Iraq and Afghanistan. Non-

state terrorism, when considered as a pragmatic tool in a conflict, relies on governments to respond with an excess of repressive violence. For example, a terrorist attack in Yemen may be carried out in response to a drone killing of women and children. The response by the US Government is to order another drone strike to ‘punish’ the terrorists. Ordering the drone killing then proves the point for the non-state actor engaged in the political violence. The political cycle is well established. It does not help that people of one particular faith are carrying out many of these non-state attacks; in fact, it has only served to strengthen the US Government’s argument.

Numerous studies have highlighted the fact that people of Islamic faith who engage in political violence are more often than not labelled in Western political narratives as terrorists, as opposed to white people who engage in political killings who hold extreme right-wing views. For example, in 2014, a young couple from the state of Nevada in the US, fatally shot three people and covered one of the bodies with a Nazi swastika and the “Don’t tread on me” flag, which has become a symbol of the extreme far-right Tea Party movement in the US (Farhi, 2014, para. 3). Paul Farhi (2014) points out that none of the news media labelled the killings as acts of terrorism, even though it would qualify as such under the existing US definitions because, as he quoted a US news organisation, “they are reluctant to call anyone a terrorist unless officials do so first” (Farhi, 2014, para. 11).

A similar situation occurred with Anders Breivik, after he killed ninety people in Norway (Shanahan, 2011). Commentators noted that Breivik was named a “murderer” or “mass murderer” rather than being labelled a terrorist (Ismail, 2016). The media focus was on Breivik being criminally insane, with his clear political motivations treated as a secondary issue. Interestingly, Breivik used conservative ideology pushed by Australian politicians John Howard and Peter Costello as supporting his efforts to protect white Christian values (Jakubowicz, 2011). This case suggests that attribution of insanity may be more likely when the perpetrator is not Islamic.

Of course, there is no question that people of Islamic faith engage in terrorism, and some verses in the Quran advocate for striking fear into the “disbelievers” and encourage other forms of blatant violence (Khan & Al-Hilali, 1996, p. 246). It is because of verses and Hadiths like these that some people have called for the

reformation of the religion (Hirsi Ali, 2015). There is no getting around the fact that the Quran advocates violence in some circumstances, but so do parts of the Christian bible (Garcia, 2015). It does not make all Christians violent, just as it does not make all Muslims violent either. It is well known that George W. Bush prayed about the invasion of Iraq that led to the deaths of millions of people (Singer, 2004). Many US states still engage in capital punishment. People who kill and torture are not limited to one faith.

Despite the obvious problems of the Quran sanctioning violence, ostracising those who are of Islamic faith will only serve to further divide the community and breed more resentment. This is a controversial issue, as it is clear that there are people who hold extreme views in many of the major religions, and the communities themselves are diverse. However, there is a strong belief in the broad Islamic community in Australia (and other places) that they are being targeted by the state *because* of their religion (Parliamentary Joint Committee on ASIO, ASIS and DSD, 2005).

Consequently, there appear to be two parallel dynamics transpiring simultaneously in the War on Terror context. Firstly, non-state actors who are engaging in political violence in places like Iraq and Afghanistan are relying on ideological frameworks used in religious texts and teachings to justify their behaviours (Smith, 2014).⁹¹ Secondly, the state needs an enemy to fulfil its coercive role, and it needs ‘targets’ that can be easily framed as ‘others’ in the broader community. Just as the ‘target’ was communists during the Cold War, in the War on Terror context it has shifted to ‘Middle Eastern terrorists’. Non-state actors using religious ideology to validate their engagement in violence has served the states involved in the War on Terror by justifying their counter-attacks which have targeted people of Middle Eastern origin. Therefore, religion is of limited relevance to the broader process – it just makes it easier for these states to target specific groups of people in the War on Terror, given that non-state actors are using Quranic verses as their ideological justification for carrying out acts of violence.

⁹¹ The Islamic State uses verses in the Quran and Hadiths that speak of the return of the Caliphate. These religious teachings have been used to justify the vicious cruelty the group has perpetrated against civilian populations (Smith, 2014).

Indeed, religion has a political role as an institution in the functioning of the state, and can be a mechanism for legitimising the state and maintaining the structure that utilises violence (de Ligt, 1989). Whilst people are focusing on religion as the problem, they are less likely to look at the structures that create and entrench violence within the society. This serves the broader political structure because it creates cognitive paralysis by keeping the focus off the actions of the political structures that support torture and violence and the broader mechanisms at play.

There is also the reality that non-state violence in the form of terrorism actually serves and legitimises the state, an effect that those who do carry out violence for a political purpose sometimes fail to recognise (Martin, 2002). Martin (2002) argues that counter violence which occurred in response to the events that took place on 9/11, was legitimised by the actions of the non-state terrorists and provided the justification and pretext for the invasions of Iraq and Afghanistan.

Incidents like the Sydney Lindt Café Siege in December 2014, which saw the killing of two hostages and the gunman, Man Haron Monis, strengthened the state. Because Monis utilised a black Islamic flag in the killings, it was labelled by the media as terrorism, and there was live coverage across most major Australian TV networks. Whilst some see that Monis was just someone with a history of mental health issues, and not connected to any terrorist groups, the government capitalised on the flag as a reason to label what was occurring as a terrorist act. In any event, it did not matter whether it was a ‘terrorist’ attack or not, because it served the same purpose of legitimising the state, and created a perceived reliance on the state to protect the citizens from terrorism (Martin, 2016). The siege also aided the state in legitimising its targeting of certain community members in order to protect the public from a deemed terrorist threat (Martin, 2016). It did not matter whether it was called terrorism or not, it had the same intended effect on the public – fear and compliance. Terrorist attacks by non-state actors provide legitimacy for passing further counter-terrorism laws, and they firmly plant themselves as the legally sanctioned enemy (Martin, 2016).

Another example of this occurred when the actions of non-state actors behind the Bali bombings created the excuse for the resumption of joint training of Australian SAS forces with other state forces that are notorious for their involvement in torture

and extrajudicial assassination, in particular, KOPASSUS (Dodd, 2005). KOPASSUS is the Indonesian Special Forces Command regiment that has been implicated in a number of crimes against humanity including rape, torture, bombings and disappearances (McCulloch, 2002). The non-state actors attack on the Kuta nightclub not only provided the impetus for the Australian Government to resume military training, but also to increase intelligence ties with Indonesia – the result may have facilitated and enabled state agents to carry out torture and killing in West Papua.

The effect of this legitimisation of state violence is devastating, and almost inevitably, non-state actors who engaged in violence ended up creating support for war and state inflicted violence. Unsurprisingly, the political rhetoric concerning torture and terrorism has served as ideological and political support for the perpetration of state inflicted torture.

State Torture as a form of Terrorism

Take my blood. Take my death shroud and the remnants of my body. Take photographs of my corpse at the grave lonely...Let them bear the burden, before their children and before history, of this wasted sinless soul, of this soul which has suffered at the hands of the 'protectors of peace' – Former Guantanamo prisoner Jumah al Dossari (as cited in Falkoff, 2007, p. 32).

Torture is intimately tied up with the ideology around state terrorism and the failure of the mainstream narrative to call state inflicted terrorism exactly what it is. The phenomenon of state terrorism has been explored by several researchers including Alexander George (1991), Michael Stohl (1988), Noam Chomsky (2003) and Edward Herman (1979). As briefly discussed in Chapter One, state-sponsored terrorism is largely absent from mainstream rhetoric, partly because the mainstream discourse has legitimised some forms of violence committed by the state, and because most scholarly and political debate is state-centric (Blakeley, 2009). Alexander George (1991) stated that “the term ‘terrorism’ has been virtually appropriated by mainstream political discussion to signify atrocities targeting the West” (p. 1). This is most notable in its lack of application to systematic state terrorism committed by the US and its allies, for example in South America, and

now in the War on Terror (Chomsky, 2003; Chomsky & Herman, 1979; George, 1991). Stohl (1988) posits that there are several dimensions of state terrorism, including the use of coercive diplomacy (e.g. the US bombing of Vietnam), nuclear deterrence, surrogate terrorism (training others to terrorise such as death squads in Latin America), and clandestine terror, such as the covert activities carried out by the CIA around the world (p. 43-58).

Definitions of terrorism in the US, and indeed the UN, outline that the act of terrorising individuals in order to induce fear in the intended target assumes that all individuals affected are simply ‘innocent’ or ‘guilty’ (Blakeley, 2009, p. 27). It implies that when violence is perpetrated by the state, this is ‘legitimate’ violence – and that those at the receiving end are ‘guilty’. This relates to arguments around the notions of ‘just war’, and that if states abide by international humanitarian law, they are operating within a moral vacuum that legitimises their behaviours, such as the excuse of having to act out of military necessity (Chomsky, 2003; Chomsky & Herman, 1979). However, scholars point out that states rarely comply with the GCs, and other mechanisms instead become the means of legitimising violence (Blakely, 2009; Stohl, 1988). The actions of the US Government and its allies in the War on Terror exemplify this reality. As explored in Chapter One, whilst there are definitional issues as to what constitutes terrorism, and the victims of terrorism, there are essentially three main features of terrorism that are common in the literature: there is threatened or actual perpetrated violence against a victim; the perpetrator intends that the action will induce terror on the victim; and the witness or victims of the violence will alter their behaviour (Blakely, 2009; Stohl, 1988).

The three elements of terrorism can clearly be seen in the practice of torture in the War on Terror, and torture is, in itself, an act of terrorism. Torture is an act of state terrorism because of the terror it inflicts on the survivors and victims, and due to the way that behaviour is modified as a result, both in the individual and the broader community.

The testimony of survivors of torture in the War on Terror is now vast, and many former prisoners describe the overwhelming fear they felt whilst in custody and the physical torture as well as physical threats that were imposed on them. David Hicks

(2010) describes being terrified that interrogators wanted to get blood from a stone, and he was afraid he was that stone. He and others in, and on transit to Guantanamo, described being hooded, blindfolded, shackled, and terrorised by screaming and dogs (Begg, 2007; Hicks, 2010; Kurnaz, 2007). The physical beatings described by US torture survivors were severe, including kicking, punching, spitting, being hit with batons and other implements, and sexual assault (Begg, 2007; Hicks, 2010; Kurnaz, 2007). Another element was the immense fear they felt when interrogators used psychologically manipulative techniques, like mock executions to terrorise prisoners (Hicks, 2010; Kurnaz, 2007). Murat Kurnaz (2007), a German citizen and former Guantanamo prisoner, describes how upon arrival at Camp X Ray in Guantanamo, one guard screamed “We’re gonna put you in a cave with Osama Bin Laden...and then we’re gonna shoot you” (p. 91). A number of US torture victims have also detailed how interrogators would tell them that family members would be killed, or their wives and children would be raped. Joseph Thomas, who was held in several CIA black sites, spoke at length about the trauma of interrogators telling him that state agents were raping his family members and that there was nothing he could do about it. He said, “it caused me to have nightmares for years” (personal communication, 28 November, 2014). The victims’ reliance on captors for their lives was also a source of fear, and it was made clear to prisoners that even the medical personnel were there only to extract information from them. One prisoner noted “their [the doctors] job was not to treat any illnesses but rather to only keep us alive and prolong our suffering unless we had information to provide the interrogators” (Deghayes, 2009).

The fear felt by prisoners who have been the subject of extraordinary rendition is also indicative of them being terrorised, not only because of the torture they personally endured, but also because of what they witnessed. For example, Ruth Blakely (2009) argues that even the witnessing of torture is intended to intimidate the other prisoners. Many former prisoners describe the panic they felt when hearing the screams and crying of other prisoners being tortured, and sometimes begging for their lives (Kurnaz, 2007). This also came in the form of interrogators showing photos of beaten and bruised prisoners to inmates threatening that if they did not cooperate with interrogators, they would be subjected to the same treatment (Grey,

2007; Hicks, 2010). For example, Binyam Mohammed who was tortured in a black site in Morocco was told, “They’ll come in wearing masks and beat you up. They’ll beat you with sticks. They’ll rape you first, then they’ll take a glass bottle, they break the top off, and make you sit on it” (Grey, 2007, p. 56). It is clear when hearing testimony like this that there was a strong intention to strike terror into the prisoners, and it undoubtedly worked. Of course, many of these threats, and even more brutal terrorist torture techniques, were carried out on prisoners, including cutting of genitals with scalpels, sticking electrodes on genitals, and beatings that caused the death of some torture victims (CIA Inspector General, 2004; Grey, 2007).

As detailed in Chapter Two, the CIA Inspector General’s report describes torture victims being subjected to a range of terror-inducing behaviours by the CIA and US Government agents like Blackwater, including; placing detainees on racks and shackling them in painful positions, subjecting them to mock executions, telling them their children will be killed, using guns and power drills during interrogations, applying painful pressure points, giving the prisoners cold showers and placing them in front of air conditioners for hours at a time, water dousing, placing detainees in a nappy and throwing them to the concrete floor, leaving them in complete darkness for days at a time and placing them in ‘sleep deprivation cells’ (CIA Inspector General, 2004).

Some prisoners even witnessed the death and permanent disability of other victims. Murat Kurnaz (2007) describes witnessing a man being kicked to death:

I could see the prisoner’s head had been wrapped in a blanket. The soldiers hit the man’s head with their rifles and kicked him with their boots... There were around a hundred feet between our pen and the open hangar. I noticed that the man was no longer moving. The soldiers kept kicking him. Then they walked away, leaving him lying there...The next morning, the prisoner was still lying on the ground...he was lying in a pool of blood....He was dead...And I might be next (Kurnaz, 2007, p. 70-71).

Other prisoners witnessed the infliction of permanent disability on those who defied the guards in Guantanamo. Prisoners have reported that a man was pepper sprayed, and his legs were pulled out from underneath his body and he was repeatedly beaten

and kicked. He was eventually taken to the detainee hospital where, years after, prisoners would see him chained to the bed, shaking continuously and no longer able to feed himself or go to the toilet unassisted (Hicks, 2010). There is no doubt that the witnessing of this level of violence was intended to induce dread in those who were also detained.

The third condition of terrorism is for the witness or survivor to change their behaviour. This manifested in interrogators and other US Government agents encouraging prisoners to be compliant and talk as a result of their suffering. Many former prisoners described making admissions just to make the pain and torment cease (Begg, 2007; Hicks, 2010; Kurnaz, 2007). Kurnaz (2007) describes interrogators changing tactics when they were not getting the answers they wanted. He said:

Before I realised what was happening, I felt the first jolt. It was electricity. An electroshock. They put electrodes on the soles of my feet...It was as if my body was lifting itself off the ground of its own accord...There as a bang. It hurt a lot. I felt warmth, jolts, cramps (Kurnaz, 2007, p. 69).

Interrogators then asked him whether he wanted to change his last answer. Kurnaz (2007) continued, "That was the worst thing, knowing that the pain would come again, until you thought there was no way you could take it anymore" (p. 70). Binyam Mohammed also described what he termed the "circle of torture", in which "They'd ask me a question. I'd say one thing. They'd say it was a lie. I'd say another. They'd say it was a lie. I could not work out what they wanted to hear... They tortured me again" (as cited in Grey, 2007, p. 58).

Sometimes mind-altering drugs were used to modify behaviour. Mohammed describes having drugs added to his food and through an intravenous drip, on top of the use of excruciatingly loud music and temperature manipulation (Grey, 2007). Guantanamo prisoners were given experimental drugs in the form of pills and injections in order to alter their mental state and modify their behaviours. David Hicks (2010) described being taken for an operation on a hernia in 2003, but instead of being completely anaesthetised, a civilian interrogator was brought in to conduct an interrogation whilst he was in an altered state of consciousness. Certainly, David

described the medical experimentation as the most harrowing part of his torture, and he still has nightmares about being forcibly medicated. David said “I was given another injection. I was scared and pleaded for them not to do it, but I was threatened with an IRF’ing if I did not cooperate...I was quickly aware of the results of the injection. I went straight to the corner and curled up... I tried to fight this reaction but was powerless” (personal communication, 6 June, 2009).⁹² David’s medical records demonstrate that in April 2003, he suffered a burst ear-drum after being given unknown pills that had significant health effects.

Another form of torment for captives was the uncertainty about when, or if, they would ever be released. Interrogators would state that if the prisoners didn’t tell the truth, they would never be returned to their families. Joseph Thomas refers to interrogators telling him “if you don’t help yourself [by making confessions], you won’t be going home”, but describes that when he told them the truth, they kept torturing him anyway (personal communication, 28 November, 2014). It is evident that the threat of indefinite detention, and the endless cycle of torture, caused significant torment for the former US captives. But it is inevitably not only the tortured men and women who suffered at the thought of potential indefinite detention, it would also have been equally as traumatic for the families – a type of trickle-down effect.

The impacts of torture are never solely felt by the individual or group at the physical or psychological receiving end. Whilst the torture memos authored by Bush Administration and public statements by officials did not expressly state that instilling terror was the aim of the torture program in the War on Terror, the terrorising effects of torture on the individual and the wider community are unambiguous. If a victim of torture dies, and the community hears about it, it instills fear. Even if the person does not die in the process of torture, they become a ‘living testament’ to the torture that was perpetrated against them – those who hear about their torture then become afraid that they too may be subjected to the same treatment. In addition, the trickle-down effect of torture means that torture that is

⁹² IRF refers to Guantanamo’s Internal or Instant Reaction Force which is a riot squad responsible for breaking bones and beating prisoners. One team caused the brain damage of Sgt. Sean Baker, who was dressed as a detainee during a training exercise. Baker was beaten so severely, he now has seizures (Simpson, 2004).

perpetrated in the context of war can be exported to the domestic sphere after the conflict ends. For example, techniques used at Abu Ghraib were used on psychiatric patients in Belgium, when patients were placed on a leash and forced to walk on all fours (Vervaeke, 2010).

It also must be made clear that even though public displays of torture are not practised in the context of the War on Terror, the visual is not necessary to instil the same amount of fear. Just as political dissidents in some Latin American countries were snatched off the streets, tortured by state officials and then dumped in public places with physical injuries to prove it, the War on Terror is littered with numerous examples of similar occurrences. However, because of the prevalence of ‘clean torture’ used by Western states, the victims are most commonly returned with no physical marks (Rejali, 2007).

Even the testimony of a torture victim has the capacity to alarm a community in the same way as any act of terrorism. Vivid descriptions of acts of torture can cause vicarious trauma in the broader community. When the photos of the torture that occurred in Abu Ghraib prison were released in 2004, there were shockwaves through many Middle Eastern countries. People who were in Iraq at the time describe the feelings of horror when they saw the photos of the men. A colleague who was present in Iraq stated “I remember the outrage, people were angry, but they were also scared. They knew it could happen to them” (personal communication, 5 May, 2013). David Hicks (2010) recalls that some of the guards at Guantanamo were “happy” that the photos came out because it sent a message to their ‘enemies’ “not to fuck with us”, so people were afraid of what they would do to them (personal communication, 2 October, 2010).

Hence, given the evidence, one can certainly argue that torture in the War on Terror is a form of state terrorism because it draws on the three commonly recognised preconditions for a terrorism classification; 1. there is strong evidence of threatened or actual perpetrated violence against those detained in US custody; 2. the perpetrator intended the action to induce terror on the victims – for example, through physical beatings or by threatening life and the lives of family members; and 3. those subjected to, and witnesses to the violence altered their behaviour and said anything to make the pain and torment stop.

One of the most concerning elements in this, is that in numerous official statements and media stories, the terror induced by torture was ignored or seen as excusable or, in some cases, even celebrated. Whilst there were outright criticisms of US Government sanctioned torture, and some exceptional pieces that advocated for the victims, most commonly torture was framed as the fault of the survivor, and never labelled for what it was – state terrorism. Commentators who identified torture as wrong and never permissible still largely fell into the trap of making personal attacks on survivors, or calling into question their guilt or innocence, and sometimes the truthfulness of their testimony. The lack of courage and apathy shown towards torture survivors in the War on Terror continues to be felt.

‘Recreational’ Torture and the Normalisation of Violence

One could say that capitalist culture has produced a predatory culture of control and cruelty that promoted vast forms of suffering and repression and it does this increasingly through cultural apparatuses that promote widespread symbolic violence – Henry Giroux (as cited in Tristan, 2013 para. 11).

In his book *The Violence of Organised Forgetting*, Henry Giroux (2013) raises concerns about the way in which public pedagogy has shaped individuals into commodities and shoppers rather than responsible members of society that have social obligations. When human rights are seen as a commodity and of monetary value, then the way in which social ‘problems’ like torture are interpreted, will always be challenging. Part of the commodification of violence is the way that the film, television and computer game industries have normalised certain state-enacted behaviours, particularly torture (Flynn & Salek, 2012).⁹³ International torture prevention bodies contend that a culture of violence, or public support for getting ‘tough on crime’, increases the risks of torture being perpetrated and viewed as acceptable (Office of the United Nations High Commissioner for Human Rights et al., 2010; Staub, 1990). This has certainly been apparent in the War on Terror and

⁹³ It is important to note the influence of the military and CIA in the production of these methods of ‘entertainment’. For example, as already mentioned in Chapter One, the CIA was involved in script changes to the film *Zero Dark Thirty* which depicted the torture of someone suspected as being involved in the 9/11 attacks. They wanted the CIA to be viewed more favourably.

the associated dogma has served as ideological and political support for the perpetration of torture.

On any given night in Australia (and elsewhere), it is likely that viewers can switch on to a program that either glorifies violent state-based behaviours most commonly conducted by military and police, or promotes the use of torture against an ‘enemy’. Seeing depictions of the ‘goodies’ torturing the ‘baddies’ to elicit information and prevent a so-called terrorist threat is certainly not an unusual sight in the War on Terror era, and research has confirmed an increase in such depictions since 9/11 (Kearns & Young, 2014).

But the impacts of this saturation are yet to be fully realised. As briefly discussed in Chapter One, research demonstrates that watching depictions of torture as being purportedly ‘effective’ at eliciting information from prisoners, impacts dramatically on a viewer’s attitude towards torture (Kearns & Young, 2014). For example, out of five seasons of the television program *24*, there were sixty scenes depicting torture (Kearns & Young, 2014). A study of students who watched *24*, revealed that after watching the depictions of torture, their level of support for torture increased and, more concerning, they demonstrated a behavioural commitment to this belief (Kearns & Young, 2014). The study found that 64 per cent of those who were supportive of torture after watching the *24* clip signed a petition in support of their stated beliefs (Kearns & Young, 2014).

Studies also suggest that when torture is normalised and considered the status quo, it is more likely that pro-torture attitudes will follow (Gronke et.al., 2010). Further, scientists have found that attitudes towards aggression are potential predictors of aggressive behaviour (Friedman, 2016). The fact that violence, including torture, has become so normalised and continues to readily be shown on Western television screens is therefore a concerning situation.

People watch torture as a form of recreation, whether through Hollywood productions that are infiltrated by political players to promote a pro-war or pro-torture mentality, such as *Zero Dark Thirty*, or video games and other violence-based activities. Computer games such as *Black Ops* and *War on Terrorism* that depict extreme violence and torture can desensitise the viewer to the behaviours

(Brockmyer, 2014; Carnagey, Anderson & Bushman, 2006).⁹⁴ One online game called *Osamagotchi* allows a player to switch to ‘God Bless America’ mode, which allows the player to torture Osama bin Laden in different ways (Tin, 2011). The generation of young people who are now in their teens and early twenties are growing up in a media environment saturated with violence that could potentially lead to decreased empathy.

Indeed, the normalisation of violence and torture to this extent provides for a structural amnesia in relation to the experience of the torture survivors and victims. Torture, as a gross violation of human rights, is framed as ‘enhanced interrogation’, or acceptable violence that is only used on people who are deserving of such treatment – like terrorists. Torturing people for ‘fun’ in computer games and watching torture on television or film as a form of recreation serves to trivialise the serious social consequences of torture, not to mention the pain and experience of the victims and survivors. Further, normalising torture serves as an erasure of memory that these actions occurred against human beings rather than fictional characters in a film. It is a challenge for torture survivors to feel safe in their surroundings whilst they live in a pro-torture environment.

This phenomenon is exacerbated by the mainstream media’s reporting about torture, especially when the victim’s testimony is regarded as illegitimate in the public arena. Because the national security cloak was sold as more important than concern over torture, little weight was given to the testimony of torture victims who were implicated in terrorism related activity. It became almost seditious to speak about Western countries engaging in terrorism. The mere suggestion that the men and women of Iraq and Afghanistan who were being subjected to bombing, assassinations and torture by Coalition forces would be resentful or unwilling to cooperate was barely mentioned in the public realm, even though theorists such as Chalmers Johnson (2007) had already argued that events like 9/11 were a form of blowback. Their suffering was only presented as relevant when it was at the hands of Saddam Hussein or other Middle Eastern dictators. Australian television screens

⁹⁴ For example, Anders Breivik used the Black Ops game for target practice before he killed all of those people in Norway.

were swamped with images of local people grateful for the ‘assistance’ of the coalition forces, but were rarely shown dissenting voices (Riddick, 2013).

Because of the political rhetoric and social situation, the seriousness of the torture and weight given to testimony was wholly dependent on the country or people being accused. For example, as outlined in the previous chapter, the torture committed by Saddam Hussein and the Taliban was given plenty of air time (“Kids freed from school torture cell”, 2011; “Saddam’s execution the wrong option for many Iraqi’s”, 2007). The ‘enemy’ was cast as brutal and inhumane because of the torture perpetrated on the people of Iraq and Afghanistan, but it was a different story when Western forces were accused of similar forms of torture.

Overall, ‘recreational’ torture serves as part of the torture support network by providing ideological and political support through; normalising state-inflicted violence, creating a social situation that reinforces the lack of humanity of the victims/survivors, presenting misleading narratives that promote moral disengagement, and creating a distorted view of reality. This supports outrage management tactics on an ideological and political level through reinterpreting torture as a normal activity carried out for fun or out of necessity on national security grounds, and devaluing the survivors/victims and their experience.

Taking the Politics out of Torture

The divisions between those to the left and right of politics have also served the torture support network by creating a diversion away from the issues relating to torture and the structures that give rise to torture, and have further divided the community. It could be argued that the narrative surrounding torture has devolved into a simplistic understanding of the world, along the lines of Bush’s ‘you’re with us, or against us’ assertion, and it has been split along political lines that have played off against each other, thereby creating another barrier to confronting torture.

The emergence of far-right nationalist political parties in Australia, such as the United Patriots Front (UPF) and Rise Up Australia party, which have strong racist ideological foundations have been one such manifestation of this. These groups have been involved in violent clashes with far-left anti-fascist and pro-multiculturalism

groups in Australia (Spooner, Gray & Dobbin, 2016). The theme of the protests on the part of the UPF and Rise Up has been to push an anti-Islam and pro-white agenda, further dividing the Australian community along political and religious lines (Spooner, Gray & Dobbin, 2016). However, the ideology and actions of the far-left have not been helpful to the torture prevention movement either. Members of the far-left involved in the perpetration of violence in order to protest far-right groups have only served to support the state and legitimise their violent responses and harsher stance on public protest.

Although humanitarianism and the worth of the individual are more firmly grounded in the political philosophy of liberalism than in any notions of the common good, the right of politics has tended to be more tolerant of torture. For example, studies have demonstrated that those with views considered as right-wing authoritarian inflicted higher levels of electric shock in laboratory experiments (Altemeyer, 1981). This correlates with other research that points to those with conservative political views aligning with the pro-torture position (Gronke et al., 2010).

It is increasingly clear that torture has developed into a partisan issue (Pew Research Center, 2016; Wallace, 2013), and regardless of the moral dilemmas surrounding torture, the politics concerning the right and left has impacted the way torture has been framed and discussed in the public realm. For example, many of the opinion columns discussing the torture of people in the War on Terror examined over the ten year period studied in this thesis demonstrate the right and left attacking each other on political grounds, leaving no space for the issues that require more serious attention.⁹⁵ Because those who sit to the right of the political spectrum are more likely to support torture, debates have centred on pushing party lines, rather than engaging in a serious discussion about the ethics of torturing human beings. Indeed, discussions around torture that have devolved into a clash between the left and right serve no purpose except to further divide the community along political lines. Whilst right and left are fighting amongst themselves, torture survivors are left to pick up the pieces of their world.

⁹⁵ Pro-torture opinion columns written by those with high circulation are particularly concerning, such as those by Andrew Bolt (2008) and Miranda Devine (2006; 2011).

Simplistic political narratives therefore need to be challenged by those who find themselves to the right and left of politics. Indeed, the manifestation of both the right and left in any fundamentalist or extremist fashion is divisive, and takes the focus off the humanity of the person or people who are subjected to torture. The infliction of torture as part of the War on Terror demonstrated that some people on both sides of politics have been responsible for, or complicit in, either covering-up torture, or aided in framing torture as excusable in some situations, and in discrediting survivors. The current system supports both right and left to condone torture, and aid in the tactics of cover-up.

A Brief Summary

So far, this chapter has discussed how political rhetoric played a significant role in the normalisation of state-inflicted violence and terrorism through the crafting of narratives that seek to moralise torture, cast society into groups of good and evil, and obstructively divide individuals and groups along political lines. State-inflicted violence has become largely normalised and ‘recreationalised’, and political rhetoric has served to reinforce torture as legitimate violence used against those cast as enemies. These ideological and political strategies have functioned as support mechanisms for state-inflicted torture and the outrage management tactics. Despite the selective political rhetoric surrounding torture and terrorism, addressing the underlying political ideology of individuals is insufficient, and what has become most apparent is that a larger and more covert operating system is not only providing the mechanisms to carry out torture, but also the support to prevent oversight and allow torture to be carried out in secrecy. These mechanisms are unresponsive to civilian leadership. The increased manifestation of covert operations, militarism and the creation of global surveillance networks have all contributed to a system that facilitates and condones torture, whether through the intimidation and prosecution of whistleblowers, or the systems in place that manipulate and control the narrative. The following section explores these structural elements of support.

Torture as an Instrument of the Deep State: “Imperium in imperium” the State within a State

...there were actually two governments: the one that was elected, and the other, secret regime, governing in the dark – Edward Snowden (as cited in Retiman, 2013, p. 4).

Historically speaking, the state is a relatively new form of social organisation. The state has been widely confused with the government, however it is much more complex than this (Heywood, 2004). Modern versions of the state are commonly defined as a collection of human agents organised by geographic location, into various institutions of government, the bureaucracy, military, police and courts which can be described as the body politic (Heywood, 2004; Lindsey, 2013, p. 11). The defining feature of the modern state is the notion of sovereignty⁹⁶ and its absolute and unrestricted power – if you want to live within the state, you must abide by its laws within its territory (Heywood, 2004, p. 76). This has led to much criticism of the state as an entity of oppression, as before the creation of the modern state, anarchist literature in particular points to the way in which society was able to order itself naturally, without a centralised system of governance (Perlin, 1979).

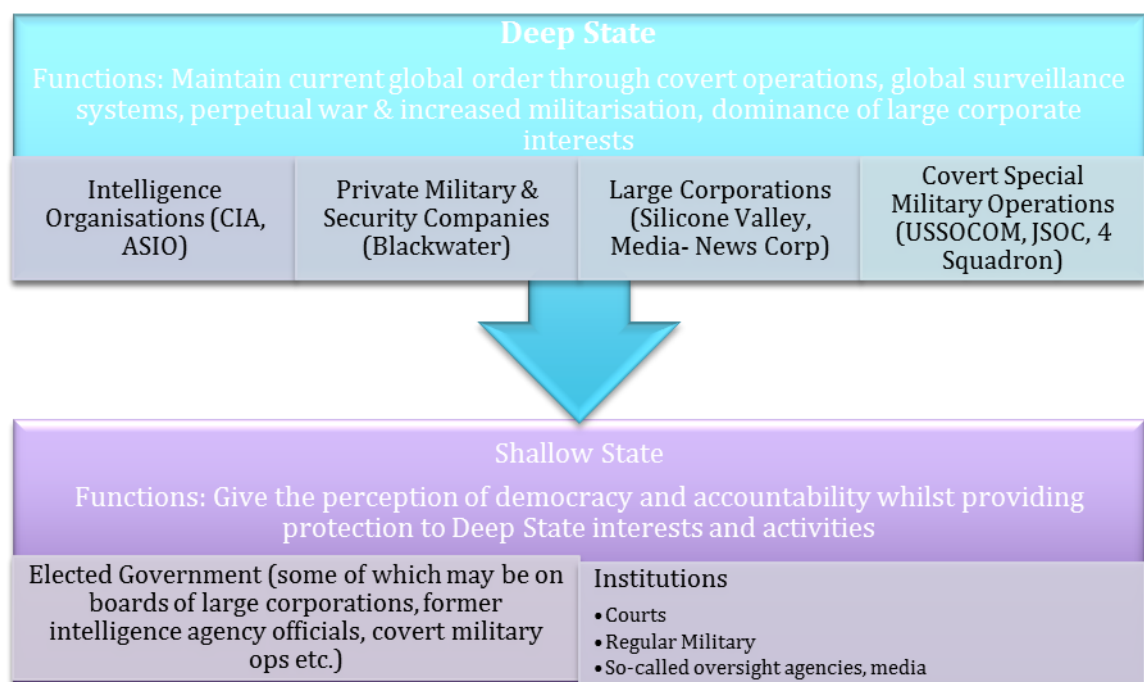
As discussed in Chapter One, Thomas Hobbes (2016) described the state as a leviathan, a giant monster that displays ultimate power. To maintain control of its territory the state has a coercive function in order to compel its citizens to obey the laws determined by the government (Heywood, 2004; Hobbes, 2016). Further, Weber suggests that the state claims the use of ‘legitimate violence’ as a practical expression of this state sovereignty (Heywood, 2004, p. 77). The relationship between the use of violence and state sovereignty led Philip Bobbit (2002) to characterise the state as a war-making institution and indeed, much has been written about the way in which politics is dominated by the military industrial complex (Mills, 1956). Even in a modern liberal democracy, where the role of the state is minimised to what John Locke (1965) characterises as a ‘nightwatchman’, the state

⁹⁶ It is recognised that there is a distinction between legal and political sovereignty. Political sovereignty refers to the existence of a supreme political power “possessed of the ability to command obedience because it monopolises coercive force” as opposed to the law claiming the authority to require someone to comply (Heywood, 2004, p. 91).

still has coercive functions. After 9/11, the coercive activities of numerous states, especially the US, greatly expanded, with the increased use of private intelligence, military and security contractors.

As Figure 18 demonstrates, the modern state is no longer a body of institutions that make decisions on behalf of the people. Instead, it has morphed into a multi-faceted system that is set in place to favour particular interests. It does not matter greatly who is voted in, the same systems operate no matter what political party is in government. It is this phenomenon, and the link to coercive and secretive practices, that has led to the creation of the concept, the ‘deep’ state or ‘secret’ state.⁹⁷

Figure 18- The Elements and Functions of the Deep and Shallow State



Dynamics of the Deep State

Since the term was initially coined in Turkey,⁹⁸ there has been much debate over the concept of the deep or secret state and how it operates in different contexts. Much depends on the theoretical lens of the person defining it. For example, more recent theories of the deep state have been largely developed by those who sit on the left of

⁹⁷ The term ‘deep state’ has been most often referred to in the United States. In Australia, the ‘secret state’ is most often utilised.

⁹⁸ The concept of the deep state was originally developed to describe operating systems within the Turkish political system, allegedly comprising anti-democratic groups within the intelligence organisations or military elites who were pushing a nationalistic political agenda.

the political spectrum, and they see the actions of the deep state as an extension of class warfare, or operating as part of a broader economic social control system. Others see the functions and operations of the deep state as more complex and far-reaching. Despite the varying political lenses, the core features of the deep state are more commonly described as a political situation where, whilst appearing to work formally under the control of the established government, the deep state operates as an internal organ that does not respond to civilian leadership (Scott, 2014).

This manifests in the creation of two operating systems within modern states: the shallow state which is composed of the elected government and government owned or managed organisations; and the deep state, which is composed of high-level elements within intelligence organisations, the military, police and judiciary whose agenda is to use violence or other means to manipulate those who wield economic and political power to further ‘nationalistic’ and/or corporate goals (Lindsey, 2013, p. 4). For example, policy makers in the shallow state may claim that they are at the mercy of outside market forces and policy is therefore wholly driven by globalisation, when in reality, they are using their positions to favour certain corporations or international interests, rather than fulfil the basic needs of the community such as providing housing and healthcare, or protecting its citizens from torture.

The cornerstone of the deep state is secrecy, a complete lack of oversight and the subversion of democracy, thus it is particularly powerful in relation to understanding intelligence and security activities. Marc Ambinder & David Grady (2013) note that “misinformation is layered on top of myths and misunderstanding” in order to hide the actions of the deep state (p. 5). Indeed, ‘group-think’ drives the deep state in the same way that individuals assimilate the ideas of their supervisors or peers without even being conscious of it (Lofgren & Moyers, 2014). For example, discounting covert operations of intelligence organisations by delegating them as ‘conspiracy theories’ has been a mechanism used to stifle political debate about the existence and operations of the deep state. This has also contributed to the lack of visibility in relation to the operations of the deep state in the mainstream media, or the re-interpretation of events that minimises or diverts attention off those who are responsible for atrocities as explored above.

Manifestations of the Deep State

According to Ambinder & Grady (2013), the US deep state encompasses agencies such as the CIA, FBI, Defense Programs Activity Office, the Navy Systems Management Activity, and the Office of the Secretary of Defense's Special Capabilities Office or Special Collections Service (p. 4). One example of the manifestation of the deep state was the CIA's extraordinary rendition program that took place entirely out of the reach of Congress. Only a select few within the Bush Administration knew of the existence of the programme, as it was a clandestine CIA and private security contractor operation. The same level of secrecy was used when the Joint Special Operations Command (JSOC) SEAL team assassinated Osama Bin Laden. No Congressional permission was sought, rather only a handful of people, including the director of the CIA, Leon Panetta, and the President knew of the operation (Ambinder & Grady, 2013).

The deep state is not a group of people that sit in a room and control everything. Rather, it can manifest in different ways, whether through the creation of covert torture programs, economic systems that favour certain elite groups or organisations, or the creation of mass surveillance systems that operate as a mechanism of social control. For example, Peter Dale Scott (2014) argues that Wall Street bankers were responsible for the creation of the Federal Reserve in the United States, rather than people elected to form government. This aligns with other economic functions of the deep state, such as the incident where the US Government provided subsidies to Silicon Valley companies that produce surveillance equipment that was then used to spy on the public, in the process bypassing constitutional and democratically embedded protections. The same link was drawn by David Faris (2013), in explaining how the US Government influenced economic and political 'reforms' that have taken place in Egypt since the 2011 uprising that favour privatisation, and benefit only a small number of 'elites' (p. 99). Indeed, the economic functions are essential to the military and political aims of those who form part of it.

9/11 and the Expansion of the Deep State

...we know, there are known knowns; there are things we know we know.
We also know there are known unknowns; that is to say we know there are

some things we do not know. But there are also unknown unknowns-the ones we don't know we don't know. And if one looks throughout the history of our country and other free countries, it is the latter category that tend to be the difficult ones – Donald Rumsfeld (2002).

The events that took place on 9/11 facilitated the expansion of the operations of the deep state and expanded state power. The 'terrorist threat' and rhetoric seizing on the need for national defence have provided the underlying ideological framework for many infringements on human rights in both the United States and Australia. The same rhetoric paved the way for an increased engagement in military conflict, in particular, Australia's involvement in Iraq, at least in the shallow state arena. Yet, decisions to go to war are not made by parliament in Australia. In fact, decisions made behind closed doors in regards to engagement in US-led military intervention have become a trademark feature of successive Australian Governments.

The expansion of the deep state provided a practical and economic support for the perpetration of torture. One such manifestation of this has been the increased use of private military and intelligence contractors. According to former US congressman Mike Lofgren, as of 2014 there was 854, 000 contract personnel with top-secret clearances (Lofgren, 2014, p. 5). In 2001, a US firm called Aviation Development Corporation provided reconnaissance for the CIA in South America. They misidentified a plane which was consequently shot down, killing a missionary and her granddaughter (Yeoman, 2003). Because they were US citizens, the US Congress ordered an investigation. However, in order to block the investigation, Congress could not discuss the issue as those involved formed part of a private entity (Yeoman, 2003). No one was held to account for the deaths. It is this kind of collusion and cover-up that exemplifies the darker aspect of the deep state, and one that has played out even more prominently since 9/11. It involves collusion between the forces that operate covertly and the governments that provide immunity and inhibit transparency. The use of contractors to torture, kill and cover up has been widespread, and the phenomenon of keeping the same group of people in positions that ensure secrecy and compliance is common.

This secrecy was also extended to private military companies that have evolved into powerful armies as part of the War on Terror. Because many of the PMSCs are

staffed by former military, diplomatic or intelligence employees, it means that they are “politically formidable” (Yeoman, 2003, p. 5). For example, Blackwater’s founder Eric Prince was a former Navy SEAL and has ties with the Republican Party. Not only do many PMSCs have intimate links to government agencies and officials, they are protected by those within these organisations.

Indeed, the cases that have been brought to the courts involving rendition and torture have been countered with deployment of State Secrets Privilege because they were conducted as part of clandestine CIA, JSOC or other programs. They have operated with impunity, above any established legal system. As previously discussed, the state may provide scapegoats, usually lower level military personnel, however, those who order, oversee and carry out much of the covert torture are free from scrutiny. The perfect example of this was the fallout from the Abu Ghraib torture saga, where those like General Miller who ordered and oversaw the techniques were not only left unaccountable, but rewarded and promoted for their actions.

In order for this to occur, the mainstream media plays a role as a pillar of support for the deep state. As Herman and Chomsky’s (1988) Propaganda Model illustrates, the political and corporate influence on the mainstream US media is core to the manufacture of stories that, whilst appearing to report facts, are actually deceptive and carefully crafted manufactured messages. This was demonstrated in Chapter Five which outlined the way embedded journalists received information that was reported in the Australian media, and was largely uncritical of the way the US was treating its captives, or simply repeated press statements or wording from US talking points, as was the case in relation to Guantanamo and Australian prisoners.

Evidence about the operations of the deep state in the US, UK and Australia have been extensively revealed by the work of WikiLeaks and Edward Snowden who exposed of the level of global mass surveillance conducted by the US National Security Agency (NSA). They also demonstrated the internal machinations of government that proved it did not matter who was voted in, the same interests were protected. The War on Terror has allowed for the expansion of the activities of the deep state, both in terms of its nationalistic aims and the structures that support these activities. In the US, the ‘terrorist threat’ has paved the way for the enactment of nationalistic legislation such as the USA PATRIOT Act, which stands for *Uniting*

and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001 (USA). The Act provides for the indefinite detention of immigrants, the authorisation of law enforcement to enact warrantless searches, including the authorisation for the FBI to search telephone, email and financial records without a court order (Harris, 2014). The NSA has lied to Senate committees and there is no effective oversight (Ambinder & Grady, 2013).

This has inevitably meant that a chilling effect has occurred on freedom of speech in affected countries. As some have argued, knowing what you write online can be instantly read by someone in authority can make people think twice about expressing their opinions; for example, it may impact job opportunities because a person's Facebook page is monitored (Stray, 2013; Whitehead, 2015). The monitoring of journalists and those in government has also become a manifestation of the deep state. For example, the Snowden revelations showed that the German Chancellor Angela Merkel's phone was being monitored by the NSA ("Embassy Espionage: The NSA's Secret Spy Hub in Berlin", 2013).

Australia and the Deep State

Clandestine actions of the Australian Government have been long researched and established (Coxsedge, Coldicutt & Harant, 1982; Fraser, 2014; Hall, 1978). Joan Coxsedge, Ken Coldicutt & Gerry Harrant (1982) outlined the covert element in Australian politics as manifesting in the increased influence of corporations on political decisions; CIA and other US Government and military interference in Australian politics; and the growth of other clandestine security operations, such as the establishment of ASIO the Defence Signals Directorate (DSD) and the Australian Security and Intelligence Service (ASIS) in the 1950s. Researchers also point to the way that Prime Minister Gough Whitlam (1972-1975) was removed from office after his criticism of the actions of the CIA, ASIO and ASIS, and his threats to withdraw funding for Pine Gap (Coxsedge, Coldicutt & Harant, 1982; Fraser, 2014). Former CIA spy, Victor Marchetti stated in an Australian television interview that the whole purpose of the CIA was to:

get rid of a government that they did not like and did not feel was stable, and a government that was not cooperative enough for their own purposes, and to

replace it with a more stable government. In a sense it's a Chile, but a much more muted and subtle form...they've overthrown governments all over the world...So why wouldn't they do something to Australia if they felt it was in their best interest? (as cited in Coxsedg, Coldicutt & Harant, 1982, p. 27).

More recently, it was revealed that the Australian Government has been spying on its allies, not only for their own political interests, but in relation to corporate deals, and at the behest of the US Government (WikiLeaks, 2015). The WikiLeaks files also showed that members of the Labor party, such as Mark Arbib, Michel Danby, and Bob McMullan, were giving briefings on the internal workings of government to the US embassy (Kelly, 2010). The political subservience to US interests by Bill Shorten, Labor Party leader since 2013, was also aired when the documents revealed that he met with the US consulate in Melbourne to seek approval for his prime ministership candidacy ("Wikileaks: Shorten seeks US approval for Prime Ministership", 2011). The outside influence on Australian politics is also clear in WikiLeaks cables released about Julia Gillard, Prime Minister 2010-2013, that state: "...Labor party officials have told us that one lesson Gillard took from the 2004 elections was that Australians will not elect a PM who is perceived to be anti-American." They note, Gillard "is now a strong supporter of the Australia-US Alliance and Israel...[and] recognizes that to become Prime Minister, she must move to the Center, and show her support for the Alliance with the United States"; and in another leaked document it stated that "Israeli Ambassador Yuval Rotem told us that Gillard has gone out of her way to build a relationship with Israel and that she asked him to arrange an early opportunity to visit..." ("WikiLeaks State Department Australia files", 2008). The cables also point to the ousting of former Prime Minister Kevin Rudd in order to make way for Julia Gillard because he refused to fully cooperate with US and Israeli interests, and that she was already vying for the position at least a year prior to his ousting in 2010 (WikiLeaks, 2015).

Former DFAT employee Paul Barratt (2010) commented "The effect of these conversations behind closed doors is that the United States and Israel can go about their affairs confident that Australia will never press them on any issue...the gap between public statements and the government's real views is outrageous" (para. 8 & 11). Certainly, Australia has been seen as a Little America and as subservient to

these hidden agendas, and it has long been held that political life in white Australia has always been influenced by US politics (Rolfe, 2014). The WikiLeaks files show that it did not matter who was elected in Australia, the same protection of international interests as well as cover-up and obfuscation continued.

This manifestation of the deep state is central to explaining the support and collusion of the Australian Government with the US torture program. Whilst most of these decisions were kept out of the public realm for the interests of plausible deniability and public appearance, it was clear that elected officials knew exactly what was going on, they just cooperated in keeping it silent. For example, whilst the Howard Government kept the same people with ties to the US Government involved in the communications around the treatment of detainees, they could tell the public that they were relying on diplomatic assurances that prisoners were being treated humanely. At the same time, they held meetings behind closed doors about ‘hypothetical’ situations like rendition.

One such outcome of this were the many cases where intelligence organisations like MI5 in Britain and ASIO in Australia used evidence obtained through the use of torture in other countries to target their own citizens (Evans, 2009). After revelations about the extraordinary rendition program surfaced in the UK, Craig Murray, former British ambassador to Uzbekistan, told a television program that the British Government did not ask other states whether people were tortured. He said: “As long as we kept within that guideline, then the Uzbeks, or the Syrians or the Egyptians or anyone else tortured someone and gave us the information that was OK” (Evans, 2009, p. 122). Murray, now a prominent whistleblower and human rights activist, would later state:

I had learnt a great deal about the modus operandi of the Uzbek security services and their widespread use of torture...The head of the CIA station confirmed... that the material probably was obtained under torture, but added that the CIA had not seen this as a problem...I sent official telegrams to the FCO [British Foreign and Commonwealth Office] stating that I believed we were receiving material from torture, that the material was painting a false picture and that it was both illegal and immoral for us to receive it...I was summoned back to the FCO and told by Sir Michel Wood, chief legal

adviser, that it was not illegal under the UN Convention against Torture for us to obtain or to use intelligence gained under torture, provided we did not torture ourselves or request that a named individual be tortured (as cited in Evans, 2009, p. 123-124).

The same situation occurred in the Australian context where officials attempted to use numerous statements obtained under torture in Australian courts, as demonstrated in the David Hicks and Joseph Thomas cases.

The appointment of the same people to posts integral to protecting the interests of the deep state are also an extension of this, and provides a practical function in relation to the torture support network. For example, Dennis Richardson went from the position of Director General of Security at ASIO, to being US Ambassador, to being the National Security Advisor in the Prime Minister's office. The promotion of O'Kane to a position where he assesses FOI requests in relation to torture is also a perfect example of this. Effectively, the same people are shuffled through shallow government departments whilst simultaneously operating at deep state level. The shallow state then becomes a tool for the deep state to conduct its activities.

The concepts of the deep and shallow state are helpful in understanding how organisations and individuals carry out and support torture and its cover-up. The deep state provides practical support for torture through the use of state agents that carry out covert torture, such as the work of the CIA and Blackwater, which was detailed in Chapters Two and Three. Subsequently, they are provided immunity through the shallow state structures in place that are designed to cover-up the crimes; for example, the immunity provisions granted to PMSCs and court systems that provide legal loopholes to prevent torture cases from being heard. The political support provided by the deep and shallow state ensures political enmeshment, and contributes to controlling narratives that promote a national security threat, and inevitably provides the ideological support to carry out torture. This may take the form of shifting individuals from shallow government roles, to deep state roles as private intelligence or military contractors. The media plays a role as a pillar of support by publicly disseminating information that is in the interests of the deep state. The deep state also provides economic support because of the substantial amount of funds allocated to private contractors, and associated activities such as

surveillance. This has manifested in the increased role of militarism, whether through the traditional operations of the military, or the general narratives around acceptable violence.

Militarism

America must always lead on the world stage. If we don't no one else will....The United States will use military force, unilaterally if necessary, when our core interests demand it...International opinion matters, but America should never ask permission to protect our people, our homeland, our way of life – Nobel Peace Prize winner and US President, Barack Obama (2014b, p. 2).

Research suggests that militarism contributes to the problem of torture in several ways, and has been identified as one of the preconditions for an increase in the occurrence of torture. Firstly, the manifestation of power plays a significant role in the ideology underpinning militarism considering the state is framed as the controlling power which utilises the military to curb a supposed terrorist threat. Studies conducted by Staley Milgram (1969) and Robert Zimbardo (Haney, Banks & Zimbardo, 1973) have established that anyone is capable of committing acts of cruelty given the right conditions, and that people are mostly obedient when given orders to inflict suffering on 'others'. These conditions include the post 9/11 fear-based social condition that sees an emphasis placed on protecting the public from a threat, or an increase in punitive laws that target vulnerable groups.

Military inflicted violence is framed as justifiable violence towards the 'targets', and it is usually the military or contractors that are made up of former military personnel that are involved in carrying out torture, and the learned techniques are frequently exported to the domestic sphere (Basoglu, 1993; Rejali, 2002). For example, as mentioned in Chapter One, torture techniques used at Guantanamo Bay and Abu Ghraib have spread to different parts of the world, including an incident where prison guards from Mons Prison in southern Belgium forced several prisoners from the psychiatric wing to walk on all fours and placed a dog collar and leash around their necks; and a prison in Brussels saw guards enter a prisoner's cell, beat him on

his back and testicles and ordered him to repeat “The prophet Mohammed is a paedophile” and “My mother is a whore” (Veravet, 2010, p. 30).

Militarism has crept into a number of civilian realms including law enforcement, not only through militarised training of police, but also through the weaponry used, such as Tasers (McCulloch, 2002). Professor Jude McCulloch (2002) a lecturer in Police Studies believes that this shifts police from defensive and protective roles, to more repressive and coercive ones. Indeed, years of involvement in war and political violence are attributable to the rise in the militarisation of politics and other civilian realms (Lyons, 2005). The commonly used language of militarism and military strategy emphasises the ‘us and them’ mindset that creates enemies and promotes ‘legitimate’ violence and the normalisation of violence as a means of the state. The focus on national security and advanced weaponry provides the reframing of issues as the creation of an enemy that needs to be thwarted to protect the Western way of life. Therefore, actions such as torture are deemed as necessary and a regular part of anti-terrorism strategies.

Since 9/11, militarism has contributed to the propensity and cover-up of torture in supplementary ways. There has been a substantial privatisation of the military and in the process, oversight has been limited (Feinstein, 2012). Despite the increase in militarisation, the role of traditional military in modern warfare has diminished to make way for more covert activities by private security firms and Special Forces operatives like JSOC. More troubling, are the intimate links between these covert operatives, politicians and the media, as entities that facilitate and cover-up torture and act as a support for the global economy. Indeed, the economic and political function of militarism plays a central role in the operation of the US and many other states, both in relation to the ideology underpinning the activities of those involved, and as a display of the interconnectedness between the covert operators, policy makers and corporations. To understand the operation, one must also understand the ideology behind it.

Firstly, the international order has been established in a way that ensures the only way in which states can maintain sovereignty within the current international system is to have large economies sufficient to “develop the technology that lies behind

modern military might” (Lindsey, 2013, p. 3; Perkins, 2006). The country at the head of the military empire at present is the US.

The ‘Project for a New American Century’ provides a glimpse of the ideological framework outlining the extent of global military domination sought by the US state. The policy document stated that “liberty and law must be backed up by force...The predominance of liberal democracies is necessary to prevent a return to a destabilising and dangerous great power security competition” (Ikenberry & Slaughter, 2006, p. 8). This includes the preventative use of force to ensure US military dominance and counter the rise of competitors, such as China (Ikenberry & Slaughter, 2006, p. 9). The manifestation of these policies have been the US military intervention in Iraq and Afghanistan, and the establishment of more extensive military bases and presence world-wide, including Australia.⁹⁹

In order to establish and preserve its military might, the US Government, and deep state operatives, have used the decisive step of privatising war and becoming reliant on private corporations in order to prop-up the economy as well as opinion polls (Perkins, 2006). Besides the obvious moral concerns with this situation, the US Government is then reliant on war to retain its position in the world, both on a military level, and economically.¹⁰⁰ It has now become a self-fulfilling prophecy marred with endless war, corruption and nepotism. Peace has become a lamentation, as was demonstrated in June of 2013, when the *New York Times* released an article stating “The Lack of Major Wars May be Hurting Economic Growth” (Cowen, 2014). Three months later, US and Australian forces entered Iraq and Syria again, seemingly in response to the rise of ISIS and al-Sham (Tranter, 2014).

As mentioned in Chapter Two, former Vice President Dick Cheney was CEO of a corporation called Halliburton, a subsidiary of which was KBR. At the end of the

⁹⁹ Tellingly, the policy document outlining the shift in US foreign policy to the Asia Pacific region, almost reminded Australia of its place as a tool for the US to remain the military superpower. Australia was described as being “useful” to “inculcate values and norms that align with the United States”, and that “Australia’s participation can help facilitate such efforts as well as dampen concerns about the “real” intentions behind such initiatives” i.e. setting up militarily to be ready to attack China (Cossa et al., 2009, p. 68). It suggested trilateral dialogue between Japan, Australia and the US.

¹⁰⁰ John Perkins (2006) argues that the US Government has established and maintained its power through the establishment of a ‘corporatocracy’, an economic and political system that is controlled by corporations and elite interests.

1991 Gulf War, Dick Cheney was Secretary of Defense and provided KBR \$9 million to research how private military companies could support US troops during conflict (Yeoman, 2003, p. 3). Whilst the Clinton Administration used private military companies, it was not until the Bush Administration that it escalated to the point of no return. The 2003 invasion of Iraq particularly cemented the change that saw governments pay contractors for almost everything, and money went straight into the pockets of billionaire companies, most of which had ties to the Bush Administration. Private military companies in particular secured the biggest contracts. It was again KBR that was awarded the most contracts as a result of the Iraq invasion. The Bush family also had ties to Halliburton as well as the Carlyle Group. It has been estimated that as of the 2015 financial year, the US Government spent US\$4.4 trillion dollars on the 'wars' in Iraq, Afghanistan and Pakistan alone, and this is projected to increase to an astounding \$8 trillion by 2054 (Watson Institute for International and Public Affairs, 2015).

The establishment of the Obama Administration's foreign policy, which focused on the strategic move to the Asia-Pacific region, was also inextricably linked with private corporations, particularly weapons manufacturers and companies with substantial military contracts. For example, in 2009, the groundwork for Obama's foreign policy was developed after a series of workshops in Washington DC. The workshops included representatives from several private military and intelligence organisations including Mr. Mark A. Torreano, a representative of Lockheed Martin, Capt. Richard (Dick) Diamond from Raytheon, CENTRA Technology Inc.,¹⁰¹ and the CAN Corporation (Cossa et al., 2009). Other individuals present at the 2009 policy meeting were those who have ties to the World Trade Organisation.

The largest weapons manufacturers and military contractors in the world have massive budgets to lobby governments including Boeing which spent around \$22 million, Lockheed Martin \$14 million, and United Technologies which spent \$11

¹⁰¹ CENTRA technology is an organisation that provides support to a range of clients dealing with "critical defence, intelligence, and security missions". Their website exhibits its extensive experience in "irregular warfare support" in Iraq, Afghanistan, Africa and South America. In addition the company provides technical and analytic services to support intelligence. Of specific note is the company's role in providing 'support' to the Defense Advanced Research Projects (DARPA), Office of Naval Research (ONR), Air Force Research Laboratory (AFRL), National Aeronautics and Space Administration (NASA), "and other national security agencies". See www.centratechnology.com

million on lobbying in 2015 (The Center for Responsive Politics, 2016). Even without these lobbyists, most military and security companies have intimate ties with government or intelligence organisations. For example, Lockheed Martin has bipartisan US Congressional support, and it has been noted that members of Congress read Lockheed's talking points "word-for-word" at Congressional hearings (Munsil & Wright, 2015). These contractors also provide a great deal of money for political campaigns, and therefore have exerted influence in the decisions made by political parties (Munsil & Wright, 2015).

In addition to lobbying, it is clear that politicians have significant ties to contractors through their business interests. For example, the board of Lockheed Martin contains individuals who worked for the Carlyle Group, a mega US corporation with ties to the Bush family, former British Prime Minister John Major, and former US Secretary of State James Baker.¹⁰² The political ties to the Carlyle Group apparently did not end after Bush's term ended. For example, in 2014, it was reported that the Obama Administration changed a policy initiative to reduce carbon emissions after being asked by the Carlyle Group because they were concerned it would impact on the profitability of two oil refineries they owned in Philadelphia (Alexander, 2014).

There is also a link between these private military companies and the political and intelligence community. For example, former Foreign Policy Advisor to George W Bush, Steven Hadley, and former Commander of US Strategic Command James Cartwright, sit on the board of directors at Raytheon USA. Raytheon Australia also hosts a number of former government and military insiders, including the Managing Director, who served in the Australian military for 20 years, and was previously a Defence Advisor in the Australian Parliament (Raytheon Australia, 2016). The Chief Executive of Lockheed Martin Australia and New Zealand is a former Navy Rear Admiral, Defence Attaché and Head of Australian Defence Staff in Washington (Lockheed Martin, 2016). Former Labor Deputy Prime Minister, Kim Beazley, sits on the board of Lockheed Martin in Australia, he previously served as the Australian Ambassador to the United States from 2010-2016 (Lockheed Martin, 2016). Another

¹⁰² The Carlyle Group is a mega firm that invests in the defence industry and arms manufacturing companies. The Carlyle Group came to prominence after it was discovered an investor conference took place in Washington on September 11 2001, involving members of the Bin Laden family ("The Carlyle Group: C for Capitalism", 2003).

Australian Lockheed board member with government and intelligence ties is John Rood who, before joining Lockheed held a position at Raytheon, held various positions at the CIA, US State Department, Department of Defense, National Security Council, and was a Senate staffer (Lockheed Martin, 2016).

Given these networks, the influence of weapons manufacturers and private military contractors on policy issues is concerning. For instance, arms manufacturers, such as General Dynamics, Raytheon, Lockheed Martin and MBDA paid a reported £300,000 to exhibit at the meeting of world leaders at the 2014 NATO summit (Reprieve, 2014). Access to politicians at these high-level functions as a result of buying their way in is of extreme concern, particularly as they have proven to hold so much influence.

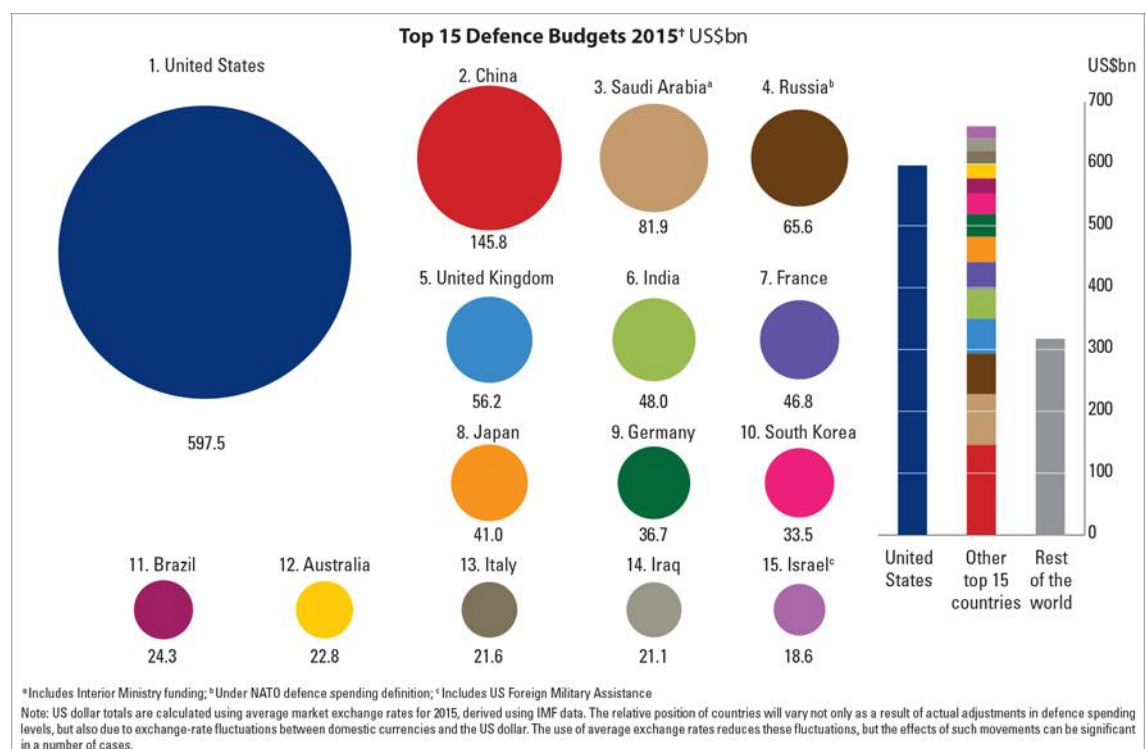
Australian foreign policy decisions and weapons contractors, which mostly involve US companies, are also inextricably linked. The US Asia Pivot can be seen as an extension of the expansion of militarism in Australia. In 2011, President Obama came to Australia to announce the shift in focus off the Middle East, towards the Asia Pacific region (Cossa et al., 2009). Obama stated that the aim was to create jobs and opportunity for the American people by solidifying the larger and long-term role the US has in the Asia Pacific region (Obama, 2011). Deep in his speech, President Obama stated that the US Government will be decreasing their military spending whilst maintaining military presence and interests in the region (Obama, 2011). But whilst the US was spending somewhat less, Australia and other allies were spending more on US military products in return for their 'presence' in the region. Almost all of Australian military spending goes to US corporations (Keane, 2012a; SIPRI, 2016).

Key to the success of the US global plan has also been the increased militarisation of countries who are traditionally independent or pacifist. The Japanese Government under Prime Minister Shinzo Abe changed their constitution to remove its pacifist clause, and for the first time in 2014 allowed the export of military products and participation in weapons-development programs in order to grow its defence industry (AFP, 2014a). The first transfer was a Patriot Advanced Capability-2 (PAC-2) infrared seeker that is attached to missiles to track incoming targets. These weapons are produced by Mitsubishi Heavy Industries, and they are under licence from the

US company Raytheon (AFP, 2014a). The Japanese Government also ordered the F-35 Joint Strike Fighter (International Institute for Strategic Studies, 2014). In accordance with the 2009 think-tank strategy for the Obama Administration, Prime Minister Abe visited Australia in July 2014 to strengthen military ties with the Australian Government, thereby fulfilling the goals of the regional alliances necessary to the US Government strategy of military dominance.

Military spending by Western nations makes up over half of the total global military spending (International Institute for Strategic Studies, 2014). Figure 19 demonstrates that the US Government topped the list in 2015-2016 at US\$597.5 billion, whilst China sat in 2nd place at US\$145.8 billion, and US allies Japan in 8th place at US\$56.2 billion, and Australia, 12th place at US\$22.8 billion.

Figure 19- Top 15 Defence Budgets 2015-2016



(Source: International Institute for Strategic Studies, 2016)

The US Government is the largest arms exporter globally (SIPRI, 2016). It is estimated that the US has exported US\$108 082 million worth of weapons since 2002 (SIPRI, 2016). The largest arms importers are India, closely followed by Saudi

Arabia, then China and the United Arab Emirates (SIPRI, 2016). The arms trade inevitably provides significant support for the US economy.

But the issue is not just the vast economic and political power that defence contractors have, it is the considerable influence they exert on the media landscape, either directly, or indirectly (Der Derian, 2001). Norman Solomon's (2005) book *War made Easy* details the links between companies like General Electric and the influence they had on the reporting on the successive military interventions in Iraq. Solomon (2005) notes that military contractors are able to exert media influence in several ways, including the use of paid advertisements as well as more overt means. For example, General Electric had \$2 million in military contracts during the Gulf War, and also owned the US media company NBC. Inevitably, the reporting on the Gulf War was skewed and served a pro-war agenda (Solomon, 2005).

The links between private military contractors, government and the media in Australia are less overt, but there is significant overlap. For example, the Head of Communications at Lockheed Martin Australia is a former DFAT employee, and previously worked for Defence South Australia (Lockheed Martin, 2016). The Non-Executive Chairman of Prime Media Group, which includes *Sky News Australia*, has worked as an advisor for the American Australian Association, which was established by American bankers and "has provided an important forum for exchange between political and business leaders across the United States and Australia. Every Australian Prime Minister...[has] been among the many individuals hosted by the Association" (American Australian Association, 2016). One of the Patrons of the Association includes the Chairman of military contractor and weapons manufacturer, the Boeing Company, W. James McNerney (American Australian Association, 2016). Before taking the role as the Association's Chairperson, Jennifer Nason was the Managing Director and Global Chairman of Technology, Media and Telecom Investment Banking at J.P. Morgan Chase & Co. (American Australian Association, 2016). The Association's Board of Directors and Patrons also includes Jim Kennedy and Robert Thomson, both holding executive positions at the most influential media organisation in Australia, News Corp. (American Australian Association, 2016). Coincidentally, News Corp. chairman, Rupert Murdoch is also a Patron of the American Australian Association. Murdoch's News Corp. dominates

the Australian media landscape (Pusey & McCutcheon, 2011), and has long been the make-or-break of successive Australian Prime Ministers, even though he runs his media empire from the US. For example, Murdoch's support for Kevin Rudd correlated in positive media stories that eventually saw him elected in 2007 ("Rupert Murdoch backs Rudd as future PM", 2007).

Given the apparent incestuous link between private military companies and manufacturers, politicians, policy formulation and media, the network of militarised systems plays a large role in the function of the deep state and the cover-up of torture. Indeed, this has filtered through to different parts of the world. This phenomenon has never been more apparent than since the events of 9/11.

Australia and the Expansion of Militarism

The increased military collaboration between the US and Australian Government has served as a mechanism for supporting torture and its cover-up. This coincided with the expansion of military ties between the Australian and US Government over the past two decades, and the increasing presence of US troops and bases on Australian soil. Put simply, whilst the Australian state is militarily, economically and politically enmeshed with US military presence and support, the Australian Government's allegiance to its own citizens is compromised and regarded as secondary to foreign powers and private entities, as was clearly the case with the Australian victims of US Government sanctioned torture.

Concern over US military presence became an issue during the Cold War era, in light of the substantial number of US bases and the secrecy surrounding their activities, resulting in a likelihood that Australia would become a target in a nuclear conflict. This was "because many [US bases] had deterrence or warning factors associated with US nuclear forces" (McCaffrie & Rahman, 2014, p. 89).¹⁰³ However, this opposition dissipated after the end of the Cold War when the Australian Government's position shifted to the US presence being necessary to ensure the peace and security of the Asia Pacific region (McCaffrie & Rahman,

¹⁰³ The full extent of the activities of US Government bases still remains controversial. The US Government does not disclose the full extent of the operations to the Australian people (McCaffrie & Rahman, 2014, p. 97).

2014, p. 90). Acceptance of US military presence in the region has been somewhat dependent on political parties. As Jack McCaffrie and Chris Rahman (2014) state, at times when various Labor Governments have been in power, the US Government has threatened to cut off intelligence flows to Australia and so the government had very little control over them (p. 98). However, this appears to have changed as a result of 9/11.

Since 9/11, the US-Australia alliance has been at the core of Australia's National Security Strategy for both the Liberal and Labor parties. As the 2009 Defence White Paper states "The Government's judgement is that strategic stability in the region is best underpinned by the continued presence of the United States through its network of alliances and security partnerships...The contribution of these facilities to global U.S. capabilities both strengthen the alliance and greatly enhance our own capabilities" (Commonwealth of Australia, 2009, p. 43; 94). A recent Australian Army report points out that, whilst the US will continue to remain the "strongest military power", China's growing military power will influence Australia's military strategy which incorporates potential conflict in the East, South-East and South Asia (Dorling, 2014a). This was echoed in the 2014 Defence Issues Paper which reinforced the alliance with the US as "integral" to Australia's defence and security arrangements (Australian Government, 2014b, p. 6).

With growing concerns over the rise of China and 'challenges in the Asia Pacific region', the US Government shifted its focus off the Middle East, and instead looked to Australia as key to its military presence in the region (McCaffrie & Rahman, 2014, p. 90).¹⁰⁴ In 2011, President Obama came to Australia to announce the US Global Posture Review which was seen as the most "important development in the operational arrangements under the alliance since the striking of the joint facilities in the 1980s" (Smith, 2011, p. 12942). The 2011 Australia-United States Ministerial Consultations (AUSMIN) communique outlines increased access to training

¹⁰⁴ Hartley (2014) argues that the withdrawal of Brazil, Russia, India, China and South Africa (BRICS) from the Western dominated monetary system created under the Bretton Woods agreement has also created strain. The International Monetary Fund (IMF) and World Bank were shaped and have been controlled by Western interests, so the BRICS countries have created a new BRICS New Development Bank which will finance sustainable development projects and provide assistance to members in financial difficulty. This has created a decentralisation of economic power and a shift away from Western controlled economic systems (Hartley, 2014).

facilities, access to ports and increased joint activities in the Asia-Pacific region (AUSMIN, 2011).

The foreign policy implications of having increased US military presence in Australia, and an unquestioning alliance, are extremely significant given it is an apparatus that carries out and supports the use of 'illegal' war, torture and cover-up. Former Liberal Prime Minister Malcom Fraser, went so far as to term the US-Australian alliance as "dangerous" (Fraser, 2014). The alliance has reduced Australia's international credibility as an independent, sovereign state on a number of occasions, including the proposal for a zone of peace in the Indian Ocean that was later rebuffed because of US Government pressure (Brown, 1990). The involvement of US bases and secretive government operations in the War on Terror has reinvigorated this debate.

For example, although the Australian Government's involvement in the CIA's extraordinary rendition program has been documented (Open Society Justice Initiative, 2013), there is a significant possibility that Australia was more involved than previously revealed. For instance, the US Air Force has long deployed from the military base in Darwin, Australia to Diego Garcia, a small island in the Indian Ocean which is British territory (UK Intelligence and Security Committee, 2007). The base in Diego Garcia was used as part of the extraordinary rendition program (UK Intelligence and Security Committee, 2007). If Darwin was used, this would raise serious concerns as to the Australian Government's knowledge of the operations of the US Government on Australian soil. It is unlikely that the public will ever know whether Darwin was a transit point for renditions from Diego Garcia. The Australian Government has stated that it has a policy of "full knowledge and occurrence" of the activities of foreign governments (Australia-United States Ministerial Consultations [AUSMIN], 2010). Despite this, it asserts that this does not mean the Government approves "every action or tasking; rather we approve the presence of a capability or function in support of its mutually agreed goals, based on our full and detailed understanding of that capability and the uses to which it can be put" (AUSMIN, 2010).

The use of Australian facilities as training grounds for US forces also contributes to this concern, and demonstrates the enmeshed nature of US-Australian relations. In

2005, a Memorandum of Understanding was signed for a Joint Combined Training Centre (JCTC), which provided for joint training exercises in several facilities, and included the Australian Government's agreement to host B-52, B-1 and B-2 long range bombers (McCaffrie & Rahman, 2014, pp. 102-103). Operation Talisman Sabre is a joint training exercise between the Australian and US military that occurs every year in Shoalwater Bay, Queensland. During these 'war games' live ammunition is used and military personnel are put through a range of military exercises. The training that takes place on Swan Island remains much less documented, but as raised in Chapter Three, it appears Swan Island is used to train the JSOC equivalent, 4 Squadron. The joint training of JSOC with Australian SAS forces is also concerning. Little has been revealed about the types of training that Australian and US forces engage in, and my FOI requests seeking clarification as to whether 4 Squadron and JSOC have been training in relation to interrogation techniques have blocked over the years, and are being appealed before the Administrative Appeals Tribunal.

The number of military and weapons contractors operating in Australia is also an indicator of the function of the deep state. Not only do key US weapons manufacturers have offices in Australia, the technology used to create weapons is also found in the Australian facilities. These weapons are used in such conflicts as the Israel siege on Gaza, drone strikes in Pakistan, Afghanistan and Syria, and the continuing conflicts in Africa (American Friends Service Committee, 2014). The three top arms producing companies, Lockheed Martin, Northrop Grumman and Boeing, all have offices in Australia, and the reach of these companies which operate on Australian soil is vast. In 2015, 78 per cent of Lockheed's sales were from the US Government and 21 per cent were classed as international sales (Lockheed Martin, 2016a). The Australian Government awarded Lockheed an initial seven year contract worth US\$750 million to train defence force pilots (Lockheed Martin, 2016a). And, in 2015, the Australian Government also signed an AU\$665.7 contract with Boeing to provide communication and information systems (Boeing, 2015). Figure 20 demonstrates the reach of Lockheed, Boeing and Raytheon, just three of many military contractors which operate in Australia.

Figure 20- Table Demonstrating the Global Reach of Weapons and Military Technology Suppliers, Lockheed Martin, Boeing and Raytheon

Company	Location of Headquarters	Weapons/Technology Used	Supplies to
Lockheed Martin (World's largest arms manufacturer)	USA: Maryland	<ul style="list-style-type: none"> • F-16 Fighter Jets • Longbow Hellfire Missiles • AH-64 Apache Longbow helicopter parts • Laser Weapons • Robotics/Autonomous operations • Hybrid Airships Etc. 	Mainly US, but also Israel, UAE, UK, Saudi Arabia, Qatar, Australia, Malaysia, Taiwan, Kuwait (and other un-named Middle Eastern countries), Japan, Europe (Norway, Netherlands, Italy, Germany)
Boeing (Boeing Defence Australia)	USA: Chicago	<ul style="list-style-type: none"> • F-15 Fighter jets • Apache Helicopters • B-52 Bomber • Super hornet • Maritime Surveillance • Missile Defence • Phantom Badger & Eye • Space systems (GPS) etc. 	US, China, Israel, Africa, Middle East, India, Europe, Australia, and around 1000 "un-identified" orders.
Raytheon	USA: Boston	<ul style="list-style-type: none"> • Largest producer of Guided Missiles • Cluster bombs • Bunker Busters • Radar Systems 	US, Canada, Israel, Europe (Germany, France), UK, Asia Pacific (India, Australia), Middle East (Saudi Arabia, Bahrain, Egypt, Morocco, Oman, Qatar, UAE, Jordan, Kuwait, and others)

Note: Data from Lockheed Martin (2015), Boeing (2016), and Raytheon (2016).

A particularly disturbing trajectory of these companies is the expansion of weapons that can be used to torture from a distance. For example, Raytheon has marketed a microwave weapons system called Silent Guardian that projects a beam of microwave energy into the target causing burning pain (Wright & Arthur, 2006). This is but one of many microwave energy weapons that are designed to target humans from a distance and may be used to torture. The diversification of weaponry that may facilitate torture is therefore concerning given the global reach.

Also demonstrating the political and economic enmeshment is the increased role Australia has played in the arms trade since 9/11; and with increased involvement has come an even greater lack of oversight. In 2010, an agreement made between the US, UK and Australia allowed for the unlicensed trade in arms and services between the countries, and was described by arms trade researchers as ‘scandalous’ (Feinstein, 2012). This agreement has inevitably allowed for deals to be done behind closed doors, without the knowledge of the public. Whilst a minor player in the arms trade compared to the US, China and Russia, Australia is an arms exporter. As Figure 21 demonstrates, most of Australia’s arms exports in 2014-2015 supplied the US, Indonesia, and to a lesser extent, New Zealand and Papua New Guinea (SIPRI, 2016). These arms supplies to the US and Indonesia, and the economic enmeshment it creates, may serve as a contributing factor in explaining the

Australian Government’s collusion and cover-up of torture perpetrated at the behest of both nations. Indeed, in his book *Shadow World: Inside the global arms trade*, Andrew Feinstein (2012) demonstrates that privatisation of war, widespread corruption and the increased level of covert operations post 9/11 has served as a “parallel world of money, corruption, deceit and death” (p. xxii). Australia’s increasing engagement with this parallel world should be of concern to citizens.

The reach and scope of the economic and political systems of militarism acting as an agent of the deep state is therefore vast and characteristic of the way that particular

Figure 21- TIV of Arms Exports From Australia (Source: SIPRI, 2016)

TIV of arms exports from Australia, 2014-2015			
Generated: 17 July 2016			
Figures are SIPRI Trend Indicator Values (TIVs) expressed in US\$ m. at constant (1990) prices.			
Figures may not add up due to the conventions of rounding.			
A '0' indicates that the value of deliveries is less than US\$0.5m			
For more information, see http://www.sipri.org/databases/armstransfers/background			
Source: SIPRI Arms Transfers Database			
	2014	2015	Total
Indonesia	19	37	56
Jamaica		1	1
Japan	1		1
New Zealand	3	3	6
Papua New Guinea	3		3
Philippines		6	6
Sri Lanka	5		5
Tonga		5	5
United States	60	60	120
Total	91	113	204

interests are protected. The level of collusion between politicians, private military contractors and the media provide the framework of cover up for covert practices like torture.

However, these covert activities do not operate in a vacuum away from the day-to-day lives of the public. Indeed these private companies are key to the maintenance of order and, in the process, stifling dissent to counter narratives that may be contrary to the aims and goals of the deep state, including the cover-up of torture. One such manifestation of this is the use of widespread surveillance by private security companies, and the targeting of whistleblowers by the shallow state.

Surveillance State

There [are] now more investigations and prosecutions by the Obama Administration of people under the Espionage Act – principally, whistleblowers and journalists – than all previous presidents combined, going back to 1917 – in fact, more than double – WikiLeaks founder, Julian Assange (as cited in Goodman, 2014).

The power and functions of the state are intimately tied with the practice of intimidation through the creation of the surveillance state, and solidifying the means of control through global surveillance networks. The shallow state has used the national security paradigm to practise surveillance as a means to protect the interests of the deep state, including facilitating the cover-up of torture. This has served as an element in the torture support network by facilitating the intimidation of whistleblowers and torture survivors, ideological support in the form of infiltrating social media platforms to control the narrative, and economic support due to the considerable amount of money government's provide to private corporations. The practical and ideological functions of surveillance have also supported outrage management strategies, such as the military engagement in psychological operations that denigrate torture survivors (PSYOPS).

A number of governments involved in the War on Terror have asserted that broad-scale surveillance is necessary to protect national security, however, there is little evidence to defend this claim (Harris, 2014). Even Lance Cottrell, chief technology

officer of private security firm Ntrepid,¹⁰⁵ has stated that “widespread internet surveillance tends to provide no real security benefits” (as cited in Webster, 2011). Consequences of global mass surveillance include the chilling effect on freedom of speech, the creation of norms that mean some forms of violence are deemed as acceptable, and the stifling of dissent.

The mass surveillance system has been created in a way that aids in preventing war crimes such as torture from being exposed, and several governments have taken a punitive approach to whistleblowers and publishing organisations that have exposed such evidence (Human Rights Watch, 2014b). Many recent examples have exemplified this, including the punitive treatment and sentence given to Chelsea Manning (formerly Bradley Manning),¹⁰⁶ the investigation into Edward Snowden and his malicious classification as a “traitor” by the Australian Attorney-General George Brandis (Knott, 2014), and the ongoing “unprecedented in scale and nature” investigation and persecution of WikiLeaks and its founder and editor Julian Assange, who is an Australian citizen effectively imprisoned in an Ecuadorean embassy (Dorling, 2015). It is apparent that the vilification of whistleblowers was used as a tactic by the Australian and US Government to divert attention off the either graphic, and/or widespread criminal activity that whistleblowers have exposed, including the torture of US captives, and the extra-judicial killing of civilians.

This is particularly the case for Chelsea Manning and her disclosure of caches of classified documents and audio-visual material to the whistleblowing website, WikiLeaks. Manning was an intelligence analyst for the US Army which gave her access to classified material in relation to intelligence sources, foreign policy issues, and military activities (Manning, 2013, p. 5). It was not until she was deployed to Iraq that she thought to release the classified material because she felt:

that if the general public, especially the American public, had information contained within the CIDNE-I and CIDNE-A tables it could spark a domestic debate about the role of the military and our foreign policy in general as it

¹⁰⁵ Ntrepid Corporation is advertised as a privacy and security firm. They held a USD\$2,760,000 contract with the US Air Force in 2010 (Webster, 2011).

¹⁰⁶ Chelsea Manning is undergoing treatment to change her gender from male to female.

related to Iraq and Afghanistan. I also believed the detailed analysis of data over a longer period of time by different sectors of society might cause society to re-evaluate the need or even desire to even engage in counterterrorism and counterinsurgency operations that ignore the complex dynamics of the people living in the affected environment every day (Manning, 2013, p. 6).

Her concerns increased after she realised that many of the counter-terrorism and counter-insurgency operations were “obsessed with capturing and killing human targets on lists” and that there was growing distrust between the US military and the host nation (Manning, 2013, p. 6). When sending the documents to WikiLeaks she said, “this is possibly one of the more significant documents of our time removing the fog of war and revealing the true nature of twenty-first century asymmetric warfare” (Manning, 2013, pp. 6-7). Part of the truths that Manning thought the public had the right to know about was the involvement, participation and acquiescence of US military in the killing of civilians and the torture of Iraqi people – both of which are deemed war crimes.

Manning was mostly concerned about the dehumanisation of people in the countries being attacked and the lack of value for human life – such as the US military referring to those killed as “dead bastards”, and the way that they “congratulated each other on their ability to kill in large numbers” (Manning, 2013, p. 8). A video depicting the indiscriminate killing of civilians, which would later be edited and released by WikiLeaks under the title of ‘Collateral Murder’ (WikiLeaks, 2010a), was one of the most important pieces of evidence of war crimes released by Manning. The footage revealed not only the killing of civilians, and the apparent satisfaction the US soldiers had in doing so, but also the secret public relations war being fought on the public.

The film depicted a US military unit indiscriminately killing over a dozen people in New Baghdad, Iraq from an Apache helicopter in what Manning described as “blood-lust” (Manning, 2013, p. 8). Not only was there evidence that children and two Reuters journalists were killed, but the film also clearly depicted how the Aerial Weapons Team were looking for an excuse to kill when the voices of military members can be heard calling for a wounded person to pick up a weapon so they

could shoot them (Manning, 2013, p. 8). Later the film depicts the enjoyment of the Aerial Weapons Team seeing one of the bodies being driven over by a ground vehicle (Manning, 2013; WikiLeaks, 2010a).

Manning was eventually detained after revealing her identity to hacker Adrian Llamas, who told authorities about Manning's leaks to WikiLeaks, and her location was tracked. Manning was held in particularly cruel conditions when first detained, including being left in isolation for prolonged periods, and in conditions described as inhumane by the UN Special Rapporteur on Torture (Mendez, 2012; Pilkington, 2012).¹⁰⁷ Manning was eventually convicted of five charges under the *Espionage Act* 1917 (USA), which provides that criminal intent does not need to be established, and was sentenced to 35 years imprisonment.¹⁰⁸ Ironically, the day of her sentence was National Whistleblower Protection Day, which marks the anniversary of the passing of whistleblower protection legislation that was the first of its kind in the US (Gosztola, 2014b). Manning is a prisoner of conscience, who was clearly troubled by the information that she was receiving, as opposed to what the US Government was telling the public.

Another targeted whistleblower was Edward Snowden, a former CIA employee who became disenfranchised with the "continuing litany of lies" of senior US officials, and Congress "wholly supporting the lies" (as cited in Reitman, 2013, p. 4). He told *New York Times* reporter James Risen that "Trying to work through the system, would only lead to punishment" (as cited in Reitman, 2013, p. 3). Snowden worked for the NSA as a contractor for Dell, a computer company that maintains internal NSA IT networks, and Booz Allen Hamilton which according to *Rolling Stone* was "involved in every aspect of intelligence and surveillance" in the US (Reitman, 2013).¹⁰⁹ Snowden became particularly concerned about the operations of the deep

¹⁰⁷ Parallel to the situation in Guantanamo, the US Government would not allow Juan Mendez to have an unmonitored visit, so Mendez declined the invitation to see Manning, and could not assess the conditions of detention completely (Mendez, 2012, p. 75).

¹⁰⁸ Establishing criminal intent is the cornerstone of criminal law matters – there was no burden placed on the US Government to prove that Manning disclosed the material maliciously, in an attempt to harm US relations or advantage a foreign government which is the usual requirement in espionage cases (Gosztola, 2014b).

¹⁰⁹ Whistleblower Thomas Drake noted that the mass expansion of the NSA through private security contractors led to information being widely accessible because of the amount of people that needed access. For example, a *Foreign Intelligence Surveillance Act* 1978 (FISA) order used to be stored in a safe that only a few people had access to, now files are digitised (Reitman, 2013).

state, the involvement of corporations in furthering government secrecy, and the lack of oversight of mass surveillance programs. He commented, “if the highest officials in government can break the law without fearing punishment or even any repercussions at all, secret powers become tremendously dangerous” (as cited in Reitman, 2013, p. 4). Paradoxically, Snowden is currently under asylum protection in Russia.

Massive resources were poured into the NSA after 9/11, and as a result, signals intelligence or SIGINT expanded at Fort Meade, Texas, Georgia, Colorado, Utah, and Australia’s Pine Gap (Reitman, 2013, p. 3). The number of private contractors the NSA depended on more than tripled by 2013 (Reitman, 2013, p. 3).

At the request of the NSA, the US Government passed the *Protect America Act* 2007 (USA) in response to what it said was the loss of cooperation from telecom and internet companies and in relation to so-called terrorist threats (MacAskill, 2014). Not only did the legislation allow for the mass surveillance of the public, but it also retroactively provided immunity for companies that engaged in unlawful wire-tapping (MacAskill, 2014). Similar legislation was passed in the UK in 2014 at the request of the UK’s NSA counterpart, the Government Communications Headquarters (GCHQ). The reason provided to the public was again, the emergency justification of a terrorist threat that led to a lack of adequate scrutiny of the legislation, and fear driven responses by policy makers (MacAskill, 2014). The UK legislation requires overseas companies to comply with interception warrants and data requests, and most troublingly, “to build interception capabilities into their products and infrastructure” (MacAskill, 2014, p. 1).

The collection of metadata and electronic communications has also been a cornerstone of the growth of the deep state in the Australian context. The Australian Government has significantly expanded its collection of electronic, telephonic and internet communications of Australian citizens. It is now mandatory for telecommunications companies to keep metadata records for two years (Attorney-General’s Department, 2015). It has forced some advocacy organisations and individuals to use dark web programs, like Tor, to protect their location and enable

the ability to carry out work securely.¹¹⁰ The significant breach of privacy has again been premised on the national security paradigm and the supposed need to protect the population from terrorism (Attorney-General's Department, 2015). In reality however, it is the continuing impingement on civil liberties that aids in propping-up the state and its covert and sometimes sinister operations.

Predating 9/11, but of strategic importance in the War on Terror context, the desire for global surveillance networks resulted in the '5 Eyes' arrangement, which is an 'intelligence sharing' agreement between the Australian, Canadian, New Zealand, UK and US Governments (Privacy International, 2016). The Australian Signals Directorate (ASD) is the base for the Australian information collection and sharing. This alliance was tasked at building a global surveillance infrastructure "to master the internet and spy on the world's communications" (Privacy International, 2016, para.2). The agreement is largely secret, however, thanks to Edward Snowden, it is now clear that Australia has access to intelligence from across the globe, and conversely shares information that it gathers from the ASD with its partner governments. Given that values and norms are shaped by the operation of surveillance (Johnson, Regan & Wayland, 2014), and that these governments have been implicated in sharing information gained under torture to target citizens, the implications are concerning.

These surveillance programs have also resulted in the Australian Government being further and more intimately linked with the morally dubious military and intelligence operations of the US Government. For example, the joint CIA-Australian intelligence facility at Pine Gap in the central desert of Australia has been central to intelligence sharing and the coordination of international operations and SIGINT since the 1960s (Ball, 1988).¹¹¹ Successive authorities have stated that the role of Pine Gap is to "perform government arms control function...the function of the satellites was to collect intelligence data which supports the national security of both

¹¹⁰ The Tor Project was developed as a mechanism whereby people in oppressive countries could bypass state censors and government surveillance programs to peruse the web without fear of their location or search history being used to cause them problems with authorities – such as being classified as terrorists. The program is used by journalists, activists and others who wish to protect their location and identity. For more info, see www.torproject.org.

¹¹¹ Pine Gap was actually established as a joint US-Australian facility in 1966, but it was only in 1977, after Whitlam's dismissal, that the Defense Advanced Research Projects Agency (DARPA) became the cooperating US organisation at Pine Gap (Rosenberg, 2011, p. 45).

Australia and the US...” (Rosenberg, 2011, p. 42). However, its main role is SIGINT by performing a surveillance role through the collection of telecommunications and espionage (Ball, 1988). This has only expanded since the events of 9/11, and the nature of the facility has changed. Former Australian Prime Minister Malcolm Fraser (2014) raised the serious concerns about Pine Gap being used “to pinpoint targets in real time” and to “facilitate targeted assassinations and drone killings” (p. 252).

Indeed, Pine Gap is now linked to military operations all over the world, and given the US-Australian agreement behind the cooperation, Fraser (2014) states, “it is clear that Australian personnel are involved in drone attacks, in assassination” (p. 252). Apart from the obvious moral dilemmas associated with extrajudicial killing, the secrecy surrounding the covert operations means that there is no accountability. Fraser (2014) asks, “how can we allow Pine Gap, which is now at the very heart of our relationship with America, to be used in such a fashion? Australian’s working there are not covered by US law or by any Australian law” (p. 255). Pine Gap and other US facilities on Australian soil continue to work outside any rule of law, and external oversight. The use of Pine Gap in the killing of people all over the world as a result of drone strikes is a serious and pressing human rights matter and exemplifies the operations of the deep state as supporting the torture and extrajudicial killing that characterises the War on Terror.

The other joint US Australian base on Australian soil that has caused some concern in the War on Terror has been the Joint Operations Command, located in Canberra.¹¹² This facility is the primary coordination centre for joint military operations in both Afghanistan and Iraq, and now assumedly, in the Horn of Africa. Fraser (2014) notes that this facility signifies that Australian military operations are completely reliant on the US for approval, which is an abrogation of sovereignty (p. 256).¹¹³ While this is concerning, an even greater issue is that these organisations are unaccountable to the Australian parliament or public. Even the Inspector General of

¹¹² All US bases caused concern in the 1970s and 1980s, especially North West Cape. Much of this was due to the nuclear debate.

¹¹³ Fraser (2014) also notes the play in language. Australian and US political leaders have been using the term ‘rotating through’, or removing references to the “US” in an attempt to deny that the presence means that the US has established bases. Fraser stated: “That was no more than a changing façade. It made no difference to the way in which the base was used. It was still an American base” (p. 257).

Intelligence and Security (IGIS) has a limited public role, and the Australian people are largely unaware of the actions of Australian intelligence services.

Another feature linked to the expansion of the surveillance state is the new ways that an agency determines who can be labelled as terrorists. Despite resistance from the Bush and Obama Administrations, the rules for designating people as ‘terrorists’ were released to the public in 2013. It was revealed that the Obama Administration expanded its terrorist watch-list system enabling agencies to designate anyone a terrorist without “concrete facts” or “irrefutable evidence” (National Counterterrorism Center, 2013, p. 1; Scahill & Devereaux, 2014). The US National Counterterrorism Center report outlines the secret rules for designating a person a terrorist risk, and demonstrates that the US Government now has the ability to label entire groups of people as terrorists; in the process placing them on a terrorist database, triggering enhanced security at airports and designating them to no fly lists (National Counterterrorism Center, 2013). This precarious situation allows for individuals, and even family members, to be blacklisted without any evidence (Scahill & Devereaux, 2014).

The impact of these no-fly lists has been felt on all corners of the globe, and numerous cases have arisen showing that innocent people have been caught up in this massive surveillance system and designated an ‘enemy of the state’, without any grounds, or for simply being vocal about issues that are perceived to counter US interests (Armengol, Johnson & Regan, 2014). Lawyers for activists and whistleblowers have been caught up in the system, and have been intercepted at airports because of these lists (Keane, 2012b).¹¹⁴

More generally, widespread surveillance has led to activists and whistleblowers being arrested and charged for subversive activities (Croeser, 2008). This is another mechanism of control utilised by the shallow state in order to support the interests of the deep state. Indeed, the use of surveillance is intimately tied to the economic and political functions of militarism and the increasing militarism in the form of cyber warfare. The frontlines of today’s wars are mostly on computer screens, not soldiers

¹¹⁴ Human rights lawyer Jennifer Robinson was designated an ‘inhibited person’ when trying to board a flight from Heathrow airport. She is a supporter of WikiLeaks and has advised Julian Assange (Keane, 2012b).

engaging in hand to hand combat. This is characteristic of the expansion of the deep state post 9/11.

PSYOPS – The New Frontline

War is never fought solely on the battlefield and the revelations of WikiLeaks and Snowden have exemplified this. The importance of having control over the cyber world has increased since 9/11, and is inextricably linked to the way that outrage against torture is inhibited simply through the power to set the narrative and control responses. PSYOPS refers to part of the Information Operations carried out during times of war; they are sometimes called Influence Operations (Rampton & Stauber, 2003). Dana Priest and William Arkin (2011a) describe Information Operations as “operations primarily engaged in influencing foreign perceptions and decision making. During armed conflict, they also include efforts made to achieve physical and psychological results in support of military operations” (p. 58). They can be in the form of planted media stories to manipulate an audience into supporting American interests (Priest & Arkin, 2011a; Rampton & Stauber, 2003), or planting pro-torture and dehumanising articles to lessen the outrage at the torture of people deemed enemies of the state. PSYOPS have long been used to manipulate public opinion, including during the Gulf War and the 2003 Iraq invasion, when public relations companies and the CIA were involved in setting up locals with US flags in order for television cameras to stream the manufactured pictures into Western living rooms (Rampton & Stauber, 2003).

After 9/11, the US military’s Special Operations Command spent millions of dollars funding pro-democracy/America media campaigns in the Middle East, as well as generating fake online personas to “create fissures within terrorist groups and deceive them about US operations” (Priest & Arkin, 2011a, pp. 89-90). This resulted in US spies infiltrating chat rooms where individuals were uploading terrorism related material, and then sending out Special Forces to capture and kill the resultant ‘targets’ (Harris, 2014, p. 19). Priest and Arkin (2011) note that the military were careening into areas such as “propaganda, public relations and behaviour modification messaging” (p. 91).

For example, in 2011, it was revealed that the US military were developing software whose purpose was to create fake online personas, known as ‘sock puppets’, to influence debate and opinion (Fielding & Cobain, 2011). The purpose was to have a round-the-clock system of US service personnel to respond to conversations and debates. *The Guardian* reported that the program is likely part of Operation Earnest Voice (OEV), which was developed as a psychological warfare weapon in Iraq to “counter extremist ideology and propaganda and to ensure that credible voices in that region are heard” and according to General Petraeus, to be “first with the truth” (as cited in Fielding & Cobain, 2011, p. 2).

Cyber-warfare is now a key function of all US combat, whether in relation to capturing and killing ‘insurgents’, remote killing by drone strike, or propaganda techniques (Harris, 2014). Consequently, cyber warfare has turned into an industry where military, intelligence and private security contractors have blurred the lines between winning hearts and minds, and stifling dissent – including opposition to torture and the treatment of prisoners. For example, In 2010 WikiLeaks was set to release “potentially” embarrassing information on the Bank of America (Harris, 2014, p. 114). The Justice Department had the Bank contact the law firm Hunton & Williams who had put together a team of companies to run a “cyber propaganda operation against the US chamber of commerce” called Team Themis (Harris, 2014, pp. 114-115). Team Themis included Plantir technologies, who coincidentally had the backing of Richard Perle and former CIA director George Tenet and worked with the CIA Special Operations Command and the US Marine Corps (Harris, 2014). The idea of Team Themis was to collect information on WikiLeaks supporters and volunteers “in order to intimidate them” and submit fake documents so that WikiLeaks would publish them and they could therefore be discredited (Harris, 2014, p. 115). This attack on WikiLeaks came after the embarrassing State Department releases showing the extent of cover-up in relation to torture that was occurring in Iraq and Guantanamo. The plan did not work, but it was still indicative of the level of collusion between these private contractors serving as covert operatives and shallow government.

The military has also purchased software programs that give their operatives the ability to pose as fake personas in order to give the impression of support of a

particular government policy, or to discredit people's views. In 2011, *Raw Story* ran a detailed article exposing the military's use of 'persona management software' that sets up credible looking internet profiles who have fictionalised backgrounds to prevent their real identity from being discovered (Webster, 2011). Webster notes, "a fake virtual army of people could be used to help create the impression of consensus opinion in online threads, or manipulate social media to the point where valuable stories are suppressed" (Webster, 2011).

The success of major persona software and the increased spying on activists has been explored in the research of Eveline Lubbers (2012). Although set primarily in the UK, Lubbers (2012) outlines the ways in which large corporations, including private security contractors, seek to manage and manipulate public protest, and that information has become the primary means of gaining and extorting their power. Lubbers (2012) also outlines how the targeting of activists and other people and organisations deemed to be political threats is widespread and performed in a methodical way by state operatives.

This level of collusion has been apparent to activist communities in particular, and when looking at the narratives on social media and chat forums. The Pentagon recently funded research named the Minerva Research Initiative, that examined what it termed 'social contagions' (i.e. the conditions for large scale social movements), in the process militarising social science research and conflating peaceful activist groups as being supporting of political violence (Ahmed, 2014).¹¹⁵ In effect, the Pentagon-funded research assumes that peaceful social movements are a threat to US national security (Ahmed, 2014). In Australia, the amended counter-terrorism laws included provisions that extend intelligence agencies surveillance of computer networks, extending 'material support for terrorism' definitions, which could, in effect, target those individuals and groups who are calling for torture accountability.

Therefore, surveillance can be understood as another state imposed control mechanism that serves to aid in the intimidation of whistleblowers, chill freedom of

¹¹⁵ The Minerva Research Initiative funds university research to further understand the "tipping points for large scale civil unrest across the world... to improve DoD's basic understanding of the social, cultural, behavioural, and political forces that shape regions of the world of strategic importance to the US" (Ahmed, 2014, p. 1). It was revealed that Facebook was used to conduct psychological experiments on its users by hiding emotional words from people's news feeds to test whether this had an impact on their "Like" status (Gibbs, 2014).

speech, control the narrative, delegate those critical of government policy as terrorist threats, and serve the agendas of powerful entities and individuals. The connection between private security companies as political entities is intimately tied to this expansion of surveillance. All of this is sold under the cloak of protecting national security, thereby legitimising the activities of private security contractors and governments.

Conclusion

This chapter explored the broader operating systems that have underpinned and supported the tactics of outrage management used by authorities and the media. The politics of torture and terrorism provide an explanation of the way in which the state and its agents created a social climate where violence is normalised and victims were reframed as ‘others’ whose lives are deemed as less ‘grievable’. Power exerted by the state in the form of violence such as torture, is framed as legitimate and acceptable, and reframed as a moral act, when in reality it is a form of terrorism. This ‘legitimate violence’ has permeated many institutions and aspects of modern society, including the television programs and movies whose scripts are influenced by agents of the state to present and normalise pro-torture and pro-war narratives. Whilst those with political agendas continue to play politics, and left and right wing political actors continue to fight between themselves, the state will continue to benefit from the broader inattention towards their behaviours. These tactics primarily serve as political and ideological support for the perpetration of state inflicted torture.

The creation of a broad network of individuals, organisations and institutions that not only participated in and facilitated the perpetration of torture, but enabled the cover-up, is concerning. Their livelihoods and logic for existence is reliant on perpetual war. This network includes the manifestation of two operating systems; the shallow state, which includes the elected government and institutions such as courts, and the deep state, which is unresponsive to most civilian leadership and includes intelligence agencies, private security and military contractors. These systems provide practical, economic and political support for the perpetration and cover-up of torture. For example, the shift away from regular military towards PMSCs has led to

covert torture being enacted, and served as an economic support due to the vast amount of money changing hands. Further, those placed into positions of power within these PMSCs have deep ties to governments, and can influence policy decisions, thereby creating enmeshment.

The reality is that, whilst covert activities continue to operate out of the public eye and away from any accountability, nothing will change, and the public focus will instead remain on certain individuals as aberrations who need to be 'modified'. The privatisation of the military, the expansion of surveillance programs, and the incestuous link between these broader networks that are completely reliant on each other for economic and political influence, has proven to be a disastrous combination for torture prevention. No matter who is elected, particular interests are being protected, and covert operations continue regardless, and with impunity.

In addition, these extensive networks support outrage management techniques, and suggest that the state is becoming better at implementing systems to keep the reality from the public, and cover up crimes committed against 'others'. The fact that they have gone to so much trouble to create these networks also indicates that there was opposition to torture.

However on a broader scale, it could be argued that the false comfort of democracy has only served to pacify the masses, divert attention towards terrorism, and allow those who do not respond to civilian leadership to carry out their roles with impunity, leaving death, destruction and torture in their wake. This conforms with Foucault's (1979) theory which posits that in order for the state to carry out its punishment of 'docile bodies' that supposedly need reforming, society is being kept in a state of automatic docility, like cogs in the machine in order to maintain social order. All the while, corporations, arms dealers and private military contractors are in bed with politicians who use their influence to carry out and cover-up crimes against humanity, and operate with immunity whilst they literally make a killing. The legal system and investigatory bodies inevitably become participants in the cover-up by providing the appearance of justice. Simultaneously, the victims of torture are sold to the public as perpetrators, and the heinous acts committed against them are left largely unchallenged. The social and political structure therefore supports systematic torture, and the subsequent tactics of inhibiting outrage at

injustice of torture due to the enmeshment between states, institutions, powerful individuals and corporations.

Given the vast network of operation, and the breadth of its influence and control, addressing torture within the current operating system appears to be a significant challenge. Chapter Seven explores some methods of challenging structures that give rise to torture. By no means exhaustive, the chapter explores some tactics to address torture, including the ‘countermethods’ outlined in the Backfire Model (Martin, 2007) that seek to expose cover-up, re-humanise torture survivors and victims, reinterpret events to promote the injustice, expose the ineffectiveness of official channels, and expose intimidation. Finally, the following chapter explores whether it is necessary to abolish the state in order to remove the mechanism that supports and carries out torture and large-scale violence.

Chapter 7: Eradicating State Torture?

It is time for the world to wake up...if we want to preserve and foster peace, we must reject the coat hanger of national security, and turn once again towards justice - Former Guantanamo prisoner, Shaker Aamer (2014, para.7).

The deep and shallow state have created the social and political condition that sees violence such as torture, war and terrorism legitimised and normalised when it is imposed by the state, particularly in the context of the War on Terror. There are two important factors to consider. The first is the way power is exercised by the state and deep state, which may be described as using torture as a means to impose and retain power and control. The second factor is the network of support that has been created to sustain the perpetration and subsequent cover-up of torture, and consequent impunity. This functional support includes political, ideological, economic and practical support, and includes institutions such as the media, the rise of militarism, and the shift towards private security contractors rather than traditional military forces.

This chapter explores the methods used to counter the inhibition of outrage at injustice drawing on countermethods from the Backfire Model (Martin, 2007), such as exposing cover-up, re-humanising torture survivors and victims, interpreting events to highlight the injustice, exposing the ineffectiveness of official channels, and exposing intimidation. Finally, tactics of nonviolence are explored as a means to address torture at a structural level, given that the state cannot be relied upon to protect rights and prevent torture, the limited effectiveness of torture prevention activities so far, and the situation that sees democracies engage in covert 'clean' torture that mostly leaves no physical marks (Rejali, 2007).

'Countermethods' – Promoting Outrage

One of the key purposes of the Backfire Model (Martin, 2007) was to provide advocates with strategies to counter the methods used by those in authority to inhibit or reduce outrage at injustice. These countermethods have been termed as tactics to promote outrage, or tactics that allow appropriate outrage to be expressed in relation

to a particular issue (Martin, 2007). Countermethod techniques include exposing information about the injustice; validating the targets of injustice; interpreting the events as unjust; mobilising public support and either avoiding or discrediting official channels; and refusing to be intimidated and exposing the intimidation (Martin, 2007, p. 7).

These techniques have been effective in several cases, most notably when blowback occurred against the US Government when the photos depicting torture at the Abu Ghraib prison were released (Gray & Martin, 2007). Truda Gray & Brian Martin (2007) argue that whilst the photos served the primary purpose of circumventing the usual processes that authorities use to stifle outrage, the success of the countermethods was the combination of tactics that were able to “cut through” barriers, and provide a platform for soldiers to engage in whistleblowing, and re-humanised the victims of torture (p. 138-139). The extensive media coverage, and the number of journalists and publishers willing to speak out, created a situation that prevented US authorities from stifling outrage. It was the combination of countermethods that ensured success.

Exposing Cover-up

The exposure of information in relation to torture in the War on Terror has been difficult, but it is one of the most pressing issues facing torture prevention organisations. For example, the organisation *World Without Torture*, has noted that limited awareness about torture is “perhaps the greatest challenge facing the anti-torture movement today” (McAusland & Marmori, 2010, p. 4). Evidence suggests that authorities have gone to great lengths to promote a culture of non-disclosure that seeks to suppress evidence and prevent the public from being informed of the complete situation. However, there are countermethods that can be used to address this.

Social media has been particularly useful in spreading information to the public realm, simply because it bypasses the media filters that have been used to skew the message or promote a certain official framing of events. Social media is now an invaluable asset for advocates to expose cover-up and disseminate information about the tactics officials have used to minimise outrage.

One of the core problems with social media, however, is the limited scope, and more often than not, an inability to reach broader sections of the community. For example, an anti-torture organisation may have a number of Twitter or Facebook followers, but they are most probably already sympathetic to the cause because they have ‘followed’ in the first place, and those who hold pro-torture views are unlikely to see or be sensitive to anti-torture posts. Sock-puppets and online persona management software have also posed problems for advocates.

However, ‘hacktivist’ groups, such as *Anonymous*, have been particularly successful at countering these issues (Knappenberger, 2012). *Anonymous* have engaged in a number of strategies to spread information to a broad network of people, and have been extremely vocal when it comes to challenging government narratives around torture in the War on Terror. *Anonymous* is a diverse group of activists, but they have successfully coordinated a number of global actions against torture. For example, in 2013 *Anonymous* started the #OpGITMO campaign to show solidarity with the prisoners which resulted in the US military shutting down its wireless internet connection at Guantanamo (Toor, 2013). Part of *Anonymous*’ strategy was to encourage people to phone, fax and email ‘bomb’ political leaders, and the group posted contact details of White House and Department of Defense officials, and a list of questions to ask them about Guantanamo (Toor, 2013). *Anonymous* has also instigated a number of ‘Twitter Storms’ which use globally coordinated tweets to give prominence to an issue with the use of hash tags such as #endtorture and #GitmObama. *Anonymous* has played a key role in working with torture prevention activists in disseminating alternative sources of information to the broader community on social media because they have such a large following, particularly with young people.

Social media is one of the most valuable tools advocates have in the War on Terror context, and if organisations have broad networks, they can overcome some of the major barriers encountered when trying to spread information, not only about torture, but about the subsequent cover-up. Exposing the cover-up of torture can be as simple as exposing the language used by mainstream media and politicians to curb outrage and shift the focus off their own behaviours.

It is still the case that gaining exposure in the form of mainstream newspaper and online articles is one of the best ways to spread information about an injustice to the mainstream public, especially if it is coupled with a television interview on primetime programs. This kind of coverage can result in articles for weeks if coordinated correctly. Coverage of this nature remains difficult to achieve, as many papers are simply uninterested in addressing torture; particularly when there has been a concerted effort to placate those in authority, the coverage would discredit prior work by journalists that work at the same media organisation, or there is increased coverage of non-state terrorism. There is also the problem of papers not wanting to appear sympathetic to those accused of terrorism related offences, regardless of whether or not they have been found innocent. This appears to have impacted on the kind of stories printed about torture. Despite these issues, spreading information about the issue of torture in the War on Terror is as important in the present context as it ever was, and if this means engaging social or alternative media as a primary platform, it is an important tool for anti-torture advocates. Creating relationships with journalists that are ethical and trustworthy is an important part of this.

Images are particularly useful, as was apparent when the Abu Ghraib photos were released. Images can convey much more than words and can aid in humanising torture survivors/victims. It is important that the culture of victim blaming is addressed, and in order to do this, the focus must be on the actions of the perpetrators of torture, rather than the alleged actions of the victims/survivors. However, it is important that the perpetrators are not ostracised to the point where they feel unable to speak out. Fostering a culture of blame can be somewhat counterproductive in many aspects. Nevertheless, it is important that the image of victims as outcasts is changed to a more inclusive picture as members of society who deserve protection from torture.

It is also important to raise awareness about the vast networks of support that collaborate in the perpetration of torture and subsequent cover-up. As the outlined in the previous chapter, exposing the way in which states involved in the War on Terror have politically and economically enmeshed themselves is important to shed light on the level of collusion in the public realm. For example, this may entail social media

posts or newspaper articles that raise awareness about the economic reliance on war that is fuelled by protecting the economic and political interests of certain state and corporate entities. This would provide a context for the public to understand how mainstream narratives are manipulated and how the cover-up of torture and other crimes against humanity are achieved.

The role of Non-Government Organisations (NGOs) is important in this regard. Many NGOs have played a role in documenting cases of torture, and subsequently raising awareness about the experiences of torture survivors. For example, mainstream human rights organisations such as the Center for Constitutional Rights are extremely active in representing Guantanamo prisoners, documenting their experiences, representing them at Military Commissions hearings and relaying their stories through the mainstream media. Medical documentation of torture has also contributed to the exposure of cover-up. Organisations such as Freedom from Torture and the International Rehabilitation Council for Torture Victims (IRCTC) have successfully documented the experiences of US torture survivors and provided a platform for interested researchers and activists to read about their experiences. This has served as an effective way of exposing the cover-up of torture.

Validate Torture Survivors

One of the most important tools for promoting outrage in relation to torture is to validate the torture survivors and victims. This is particularly the case due to the significant evidence that points to the use of denigration tactics by those in authority and the media. Legitimising the suffering of torture victims in the public realm is extremely important given the serious psychological impacts of torture on survivors, as well as the commonly used tactic of denigration to invalidate their torture publicly. Many survivors and victims have been unable to convey their experience to the mainstream, and their stories have been hijacked by those in authority to skew the reality of their torture, or shift attention off their experience. Practically, this means re-humanising people who have been victims of torture by ensuring that their names are used when they are referred to publicly, instead of references to official terminology like numbers, or other labels such as ‘detainees’ and ‘terror suspects’.

Re-humanising the person by ensuring they are acknowledged as an individual and firmly establishing their worth as a human being is crucial, rather than casting victims/survivors as ‘others’. This could take the form of challenging those who state that all people in Guantanamo are terrorists, or telling the stories of the men, women and children who have been tortured in a sensitive way. Further, countering the denial by officials or the methods of shifting attention off the crime of torture is also important. An example is challenging official comments reprinted in a story that asserts a person subjected to torture has ‘confessed’ to an apparent crime. This strategy has been successfully employed by several NGOs and activist organisations such as Witness Against Torture in the US and Reprieve in Britain.

It is most important to go to the primary source for information; this has been the trap for some advocates and NGOs that have attempted to assist victims/survivors, yet have written inaccurate stories/blogs that have not validated the victim’s experience because it has contained unfounded allegations or inaccurate personal information. Seeking accurate information is essential for conveying respect to the survivor. More generally, promoting a sense of community is important in the public space. This means promoting inclusion, rather than divisive communities. Using positive imagery can be an important communication strategy.

Emphasise the Injustice

The interpretation of torture in the War on Terror as unjust is also crucial. One of the reasons why the outrage management tactics used by authorities and the media have been so effective is attributable to torture being presented as acceptable when inflicted on ‘others’. Torture denigrates every person in the community, and conveying the disastrous legacy of torture is extremely important for advocates. Powerful narratives continue to pervade the public sphere that portray torture as an anomaly that only affects a few people on the other side of the world whom authorities deemed to be unworthy of rights. Many in the broader Australian and US community are still largely unaware of what really occurred, and most would probably be horrified if they knew the details.

It is important that the lies are challenged, including those that are spread not only by officials, but the media organisations that parrot their claims uncritically.

Challenging the minimisation of the impact of torture plays a role in this, and includes challenging official narratives around torture that have framed it as ‘not that bad’. Communicating the facts around torture and its devastating consequences, therefore becomes a crucial step to convey the injustice of what occurred. This may practically take the form of encouraging people to imagine what it would be like to have a family member subjected to rendition and torture, and how they would feel if no one was held to account for their family member’s loss and suffering. Promoting the injustice can be as simple as using the language that exposes the act and subsequent events as unjust. Ensuring that the focus is on the actions of the officials, rather than the victims or survivors, is another way of emphasising the injustice. Emphasising injustice can also take the form of exposing the power exercised by officials and those who perpetrate torture to set pro-torture and anti-victim narratives. This may take the form of creating mainstream awareness about the tactics officials use to minimise the empathy people feel towards victims/survivors. Some NGOs and activist organisations have been active in attempting to convey the realities and injustice of torture to the mainstream public since the early years of the War on Terror, particularly in Europe.

These are simple strategies, but can be very powerful if conveyed effectively.

Discredit Official Channels & Mobilise Support

It has already been established that official channels have failed to hold those who ordered and carried out torture to account. One explanation is that “if agencies were able to dispense justice, then powerful elites could be convicted of crimes, and unequal social structures would be in danger of collapse” (Martin, 2007, p. 197). Indeed, the legal system and even international human rights mechanisms have failed to hold the chief architects of the torture program to account.

In this political climate, accountability for torture is a somewhat utopian idea. It is general knowledge in political circles that governments should never commission reports unless they know what the result is going to be (Hindess, 2014). So too, the legal system has done little to comfort those who have been victims of torture because of the way the system has been created. US Government lawyers have crafted ways of generating jurisdictional nightmares, and Australia has followed suit

in quiet acquiescence. Both sides of politics both in Australia and the US are largely guilty of silence on torture, and there is no reason to suggest that this will change any time soon, given the increasing militaristic ideology permeating the Australian and US spheres of government. The legal system itself has aided in the cover up through legal loop-holes like the State Secrets Privilege, or the ability for governments to prevent information from being released under FOI on 'national security' grounds.

Therefore, raising awareness about the ineffectiveness of these official channels is important, given that it is a general assumption that the legal system and other channels dispense justice. Practically, this may require advocates to publicly discredit official channels by creating awareness about the ineffective 'investigations' that have taken place as a result of torture allegations, and the continued lack of accountability for those who orchestrated and covered up torture. Exposing the limited scope of investigations, as well as the apparent appointment of biased individuals to carry out investigations, is another method. Having publicly respected individuals discrediting official channels is a powerful tool in this process. For example, aiding the mainstream coverage of military whistleblowers who have witnessed firsthand the reality for those detained as part of the War on Terror would be one such strategy. Making the investigations or court cases public is also imperative. If the public is unaware of what has occurred, those in authority will not act because the political pressure is absent. As with the above tactics, timing is everything.

Instead of utilising official channels, mobilise public support. It is important to provide a space where people can act, and feel effective in taking action. This may mean harnessing key events like International Torture Survivors Day that takes place on 26 June every year. Key events such as these are important dates to utilise when raising awareness about torture in the War on Terror, and they can also be used to mobilise people. This has been a critical time



Figure 22 - Melbourne action at US Embassy organised by the Whistleblowers, Activists & Citizens Alliance (WACA) and The Justice Campaign on the Global Day of Action to Close Guantanamo

(Source: Castro, 2014)

for action for torture prevention organisations such as World Without Torture and other activists. Timing is critical though. Spreading information about the use of torture at times when people will be open to the message is necessary to communicate effectively. Realistically, this is difficult given the social and political environment in many countries, and the rising pro-torture attitudes that continue to pervade the social landscape. If public mobilisation is absent, the inhibition of outrage tactics will be successful because there will be no political will. Nonviolent direct action is an excellent way of raising awareness and increasing political pressure, especially if carried out in a coordinated in a way that can harness media coverage.

Resisting Intimidation

The final countermethod examined here is resisting intimidation. Intimidation has been a key tool authorities use to prevent torture victims and survivors from telling their stories, as well as preventing whistleblowers from exposing their knowledge about torture. Therefore, resisting intimidation is crucial in ensuring that the public is made aware of what is happening. This may take the form of whistleblowers gaining media coverage about the intimidation that has occurred, and in turn, public pressure can be placed on authorities to protect whistleblowers from prosecution. Supporting the work of organisations that allow the spread of information governments would otherwise hide from the public is therefore important. This could be in the form of supporting publishing organisations that have exposed information about torture, and the whistleblowers that have provided information.

Supporting individuals and organisations who promote an anti-torture message is extremely important in the context of the War on Terror. It has become a dangerous time to speak out against impunity for torture, especially considering the legislation passed to prevent the exposure of information, such as the Australian laws that criminalise the publication of information about ‘special intelligence operations’ (Parliament of the Commonwealth of Australia, 2014b). These provisions can consequently catch many who carry out torture prevention work, as most clandestine torture programs are considered ‘special intelligence operations’. Providing support to those who engage in these whistleblowing activities has never been more vital.

Those who speak out are targeted by institutions that have a great deal of power and resources behind them. Ensuring that they have support is key to resisting this intimidation.

It is also important to become a credible advocate, and leaving political alliances at the door when engaging in anti-torture advocacy is vital. Party politics only serves to divide, and preaching to the converted is insufficient. Building up networks of support will aid in ensuring that the work is not only supported, but also the organisation or individual is supported sufficiently.

Most importantly, protecting the survivors from attack is essential if the public is to ever become aware of the breadth of the torture program, and the extensive impact on survivors and victims. If a survivor is trying to engage in a community that is already pro-torture, it is unlikely that they will feel safe enough to convey their experience. The media and other powerful institutions that promote pro-torture views should also be exposed. This may take the form of blog posts and social media coverage that confronts these organisations, or engaging in forms of nonviolent direct action.

Exposing those involved in the torture program, especially those who have been promoted, also forms part of this strategy. Equally, ensuring those who were either complicit through their actions or their silence, are exposed for their behaviours is an important countermethod. This could mean writing letters or boycotting organisations that have promoted or employed those involved in torture and its cover-up.

These countermethods are by no means exhaustive, but do provide a general guide for advocates to counter the tactics used to reduce outrage at the injustice of torture in the War on Terror. Over the past decade, there have been several key events that have utilised countermethod techniques, and have been effective at raising awareness about torture, such as spreading information to the mainstream public through the publishing of newspaper articles and television interviews, and the spread of information over social media. Several effective and persistent advocacy organisations have continued to call for accountability in the US and Australia, including the Center for Constitutional Rights and the American Civil Liberties

Union. However, they have mainly taken action through existing structures like the legal system, and lawsuits have been effectively blocked by authorities in many cases, exposing the limitations of official channels.

Overall however, because of the breadth of the torture support network, these techniques will only be effective to a limited degree, unless addressing official channels is interpreted as challenging the entire system. Despite some damage to the US Government's reputation, torture continues and many people are still unaware of the extent of the torture program. Some know what occurred, but are too concerned about other issues, or are simply indifferent. Regardless of the many campaigns that utilised the countermethod techniques listed above, there is no evidence of a widespread outcry on the streets or calls for the people who were involved in the torture program to be held to account. Indeed, there is little public support for an independent investigation into the torture of Australian citizens overseas. Even Amnesty International Australia dropped its 'torture and terror' campaign after President Obama took office in 2009.¹¹⁶

A contributing factor to the limited effectiveness may be partially attributable to the timing of the communication of these messages. This requires political awareness and the ability for torture prevention organisations to judge social conditions. Unless the public is open to hearing the messages there will always be limited impact. Part of this relies on empathy being established in the broader community.

Empathy

There are many discussions that delve into the question of whether a human being is born 'evil', or whether violence is a learned behaviour (i.e. the nature vs. nurture argument) (Layton, 2006). There is some evidence to suggest that there are predetermined genetics and brain structures that impede a person's ability to empathise, such as the evidence displayed in brain scans of people diagnosed with

¹¹⁶ Because Amnesty International Australia dropped the campaign, the organisation has not been effective in continuing to engage in action that raises awareness about torture in Australia. In this regard, it is important to note that the European context, in which there are overarching human rights protections, is very different to Australia. For example, the Huridocs database, which is a European database that documents human rights violations, is in my experience not very useful for activists because of a lack of uniformity in data entry, it is inaccessible to Australians and not at all useful in achieving broader structural change. Documenting human rights violations is most useful when the information is distributed to a broader audience that are open to the message.

psychopathy (Card, 2010). However, research has also determined that the environment plays an enormous role in whether these behaviours are triggered and nurtured in the 'predisposed person' (Card, 2010; Layton, 2006). In other words, if an individual is brought up in a violent culture, where torture and state violence have become normalised, there is a greater likelihood that these behaviours would manifest, and inevitably become normalised.

There is another school of thought that sees empathy as a skill that is learned rather than innate (Layton, 2006). Even though a person may be predisposed to certain adverse behaviours, the culture and environment determine whether these behaviours are triggered. This is not wholly determined by the family environment; even if children are brought up in a supportive household that models universal respect for humanity and indicates a belief that no one should be subjected to violence or torture, the broader social culture will have a greater influence on a person's acceptability of torture or violence. For example, after 9/11, studies in the US demonstrated that there was an increased level of moral disengagement during the Iraq invasion – meaning that more of the US population thought that it was acceptable to bomb Iraq, even if they knew civilians would be killed (Bandura & Owen, 2006). This as well as other studies point to the fact that moral disengagement is affected by broader social factors, such as the cultural environment that normalises violence (Bandura & Owen, 2006; McAlister et.al., 2006).

The many arms of institutionalisation play a role in this. Through the process of socialisation, contemporary Western society normalises the notion that if there is a problem in the world, resolution will only occur through military intervention (Nelles, 2003). This normalised state-inflicted violence is pervasive throughout history and school books across the world (Nelles, 2003). War has almost become interchangeable with peace, and is generally seen as the prerequisite to peace. Young people in their teens and early twenties have only known a post- 9/11 world, where the community is socialised into being afraid of 'terrorists', and believing that a Global War on Terror exists because of the actions of non-state actors. In the US, young people are immersed in a country that has been in perpetual war for decades, and some see the high incidence of shootings as one such manifestation of the cultural normalisation of violence (Robbins, 2012).

Just like fifty years ago when the public were told to be afraid of communists, there are not many serious discussions about peaceful solutions to terrorist threats, only more military intervention, draconian legislation and increased surveillance. Unsurprisingly, the social and political structure is not set up to encourage broader empathy. Whether through the media that has established certain rules around whom to portray sympathetically, or the divisive rhetoric of political leaders, there are regular practices affecting empathy that are contributing to social norms and the ongoing suffering of others. This inevitably causes a cycle of violence because of the injustice that has been created, either perceived or real, and the fact that injustice has not been addressed.

Structural Barriers

The operation of the state has a strong influence on the way people behave and, importantly, whether violence is normalised and moral disengagement takes place. Some argue that institutions, such as schools, teach children to conform, and be obedient and passive to authority for most of their formative years (Chomsky, 1995; Milgram, 1974). This remains a concern as there is evidence to suggest that individuals with a predisposition to obedience are more likely to carry out the infliction of pain if they are exposed to systematic training (Gibson, 1991). The combination of obedience and the cultural normalisation of violence presents some serious challenges in relation to torture prevention.

The structure of the modern state also means that a person cannot easily escape the influence of the state and the particular culture of violence that has been established. In contemporary Australia, most people have to work to eat, to get paid one must have a bank account, when a person works they get taxed, if taxes are paid they contribute to military spending, which in turn funds the purchase of weapons that kill people in other nations, etc. The modern state therefore binds people to the system it has created, and fosters the social conditioning that normalises state-inflicted terrorism and violence and obedience. Indeed, the media's narrative on who seems deserving of human rights protections, and whether torture is seen as acceptable in certain circumstances, is shaped by the state and its influence on social and political life.

Furthermore, it is apparent that state created institutions have contributed to the maintenance of the torture support network. For instance, because the law has been subverted by those who have engaged in the War on Terror, it is clear that the law is insufficient in preventing torture. The legal system has not provided justice for the victims/survivors. It was argued by Henry Thoreau (2000) that “cultivating respect for the law” should not be the aim as, through this, people become part of oppressive regimes (p. 172). In his seminal work *Civil Disobedience*, Thoreau states “Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice” (Thoreau, 2000, p. 172).

Similarly, this thesis has established that human rights have been subverted by powerful entities and used as a tool of oppression rather than protection. The proposition by Derrida (2001), as introduced in Chapter One, that human rights narratives are employed by powerful states as a function of empire, rather than an act of common humanity, has proven to be accurate in the War on Terror. This was demonstrated through the extensive evidence of tactics employed by authorities to minimise outrage and the supporting network to facilitate and cover-up the crimes committed. Human rights have not been equally or universally protected, and those who were tortured in the War on Terror have not been shielded by torture prohibitions outlined in international declarations, treaties and conventions such as the *Universal Declaration on Human Rights* 1949.

Even international bodies like the UN, which were supposedly created to provide global cooperation and oversight, have only served to facilitate a lack of action against torture in many respects. This has been through the creation of powerless oversight mechanisms that are legally non-binding and are reliant on political will and state compliance, or through investigatory bodies that are limited in scope and merely give the appearance that something is being done about the injustice. Instead, states are given UN platforms to assert mendacities to the public about their respect for human rights, and the supposed steps they are taking to improve their human rights record, when in actuality, they are just finding improved ways to hide the brutal reality. The political institution of the UN is effectively unable to stop states from committing torture, and it is unrealistic to rely on the UN to achieve cooperation and oversight. One view may therefore be that the UN is only interested

in targeting states that are politically expendable to more powerful interests in order to give the general appearance that they are achieving change.

Further, it is also apparent that the work of whistleblowers and transparency organisations such as WikiLeaks, has motivated institutions to become more effective at covering up their activities. Torture expert Darius Rejali (2007) notes that:

Public monitoring leads institutions that favour painful coercion to use clean torture to evade detection, and to the extent that public monitoring of human rights is a core value in modern democracies, it is the case that where we find democracies torturing today, we also find stealthy torture (p. xviii).

This has resulted in the rise of psychological torture techniques; politicians creating the public illusion that torture does not occur any more by engaging in specially crafted public declarations that omit realities; passing legislation with loopholes that allow torture; blocking journalists critical of the torture program from entering places of detention like Guantanamo; and the removal of recording devices or log books from detention facilities, as occurred on the US prison ships. There is also an apparent move for politicians not to record conversations so that the paper-trail can be protected from FOI release. In other words, torture has effectively been pushed further underground so that the broader public is kept in the dark.

In a way, the situation proved to be better for anti-torture advocates in the early days of the War on Terror when politicians and institutions that carried out torture were still leaving a trail of their activities. Now, the state is using media blackouts and other methods of stifling outrage more regularly and in a more effective manner. The reality is that the countering tactics are limited by the broader structural and political environment and, unless these structures are challenged and transformed, torture with impunity will continue.

Torture in the context of the War on Terror has not only been instigated by the state, but the state has also controlled the lack of accountability for those who ordered torture and took part in it. In addition, the shallow state is complicit in controlling and contributing to the narrative and continued lack of accountability, thereby reinforcing the injustice. The whole structure of militarism serving political and

economic interests is firmly entrenched in the modern state, thus contributing to the normalisation of, and reliance on torture and violence, not only as a source of social control, but also as the primary means of conflict resolution and to support the economy. Because of the existence of the deep state, and the fact that it matters little who is elected to government, the same policies and entrenched interests that support violence such as torture will be prevalent no matter which political party is elected. Consequently, the “atrophied version of democracy” offered by the state, and the inability to enact radical change within the current system, renders the state “useless in the struggle for progressive change” (Ross, 2008, p. 9). As one political commentator noted in the 1970s, “there are no recorded instances to my knowledge of despots resigning or secret police desisting from torture because they were asked” (C, 1979, p. 165).

So, the state has become reliant on protecting itself, rather than citizens, and this is achieved through coercion and war. Famously in Niccolo Machiavelli’s (2011) formative work *The Prince*, he submits:

My new dominion and my harder fate
Constrains me to’t, and I must guard my
State (p. 75).

Because of the structures in place, and the broad-ranging networks that support the functions of the state, an individual solution to torture, including the restoration of empathy, and the tactics discussed in the countermethods above have been limited in their effectiveness and are not sufficient to eradicate state sanctioned and inflicted torture. The systematic nature of torture in the War on Terror requires a different and more radical response.

Therefore, one might then surmise that the only way to address the culture of violence and impunity is to dismantle and abolish the state (and, in the process, the deep state) altogether, as the present situation appears to be creating, maintaining and reinforcing the injustice. There are many different visions of a decentralised, stateless world that include varieties of libertarianism and anarchism (Martin, 1995; Ross, 2008). For example, Gandhi’s anarchist *sarvodaya* envisions a nonviolent society which opposes hierarchy and proposes village-level democracy (Kantowski,

1980; Ostergaard, 1985). However, alternatives are not explored in this thesis given the complex and lengthy arguments that require in-depth examination, and this concept is a thesis in itself. Instead, the following material focuses on the *process* of achieving structural change, rather than the end goal, which would be an egalitarian, nonviolent society.

Nonviolent Resistance

Violence does not live alone and is not capable of living alone: it is necessarily interwoven with falsehood...It does not always, not necessarily, openly throttle the throat, more often it demands from its subjects only an oath of allegiance to falsehood, only complicity in falsehood – From the Nobel Lecture of Alexander Solzhenitsyn delivered to the Swedish Academy (1970).

There are many pre-conditions for radical change and political revolution has become the focus of many texts. The concept of revolution has changed over the years, with medieval and post-medieval theories focusing on exchanging the person who happened to be in authority, rather than a rebellion against established authority (Arendt, 1965). Some resist complete change and advocate for minor changes within the current operating system (Carroll, Lakey, Moyer & Taylor, 1979), for example, proposing legislative reform to broaden the definition of torture. The current social and political situation in the Australian, UK and US contexts could largely be seen as stuck in ‘reformism’. There have been tweaks to the current system, such as policy changes, however, they have continued the maintenance of the social and political order which favours particular groups of people, and serves to facilitate and hide torture. Therefore, grassroots activists focus on the importance of the development of a movement for radical change. Given the focus on torture as a means of the state to uphold its power, the use of nonviolent tactics to enact change is crucial.

Precursors of modern nonviolence theory include ancient religious traditions such as Hindu teachings of *Ahimsa* (nonviolence) and Taoism which directs that “violence goes against the very grain of the universe” (Zunes, Kurtz & Asher, 1999, p. 3). Nonviolent action has been central to successful uprisings against authoritarian

regimes for centuries, and the earliest nonviolent insurrections can be traced back to ancient Egypt (Zunes, Kurtz & Asher, 1999).

Over the past century in particular, nonviolent struggles have overthrown numerous authoritarian regimes and created substantial reforms in others (Zunes, Kurtz & Asher, 1999). Gandhi's *satyagraha*, which eventually saw the ousting of the British colonial rulers, is a famous example. The effectiveness of nonviolence can also be demonstrated in the resistance to Nazi occupation in several European countries, the toppling of Indonesian dictator Suharto in 1998, the 1986 people power movement in the Philippines that resulted in the removal of Marcos from power, as well as the removal of autocratic regimes in Serbia (2000), Madagascar (2002), Georgia (2003), and the many other instances that resulted in major social and political change (Ackerman & Duvall, 2000; Chenoweth & Stephan, 2011, p. 5-6).

Research conducted by Erica Chenoweth and Maria Stephan (2011) demonstrates that nonviolent campaigns against repressive regimes conducted between 1900 and 2006 were twice as likely to achieve full or partial success compared to campaigns that utilised violent methods (p. 7). The reason for success is that nonviolent campaigns have an advantage of attracting the support of all citizens, and therefore they do not face obstacles to the moral or physical involvement. This higher level of participation and contribution results in nonviolent social movements being more effective at creating civic disruption and therefore more likely to shift loyalties among opponents (Chenoweth & Stephan, 2011). Additionally, the researchers found that of all the conflicts they examined from 1900-2006, nonviolent resistance was able to provide more durable and internally peaceful democracies (Chenoweth & Stephan, 2011). This research provides support for the view of anarchist and pacifist Bart de Ligt, who argued that "the more violence, the less revolution" (de Ligt, 1989, p. xxix).

It has also been argued that nonviolent tactics come naturally to people, and that most human interaction is essentially nonviolent (Boulding, 1999; McAllister, 1999). This is a great strength of nonviolence, and forms the basis of many successful movements over the years. Examples include the Egyptian princess and Hebrew slave who protected a male child from being slaughtered by the pharaoh in 1300 BC,

and the Argentinean Mothers of the Disappeared who challenged authorities and demonstrated at the Plaza de Mayo in order to defy the military regime that abducted, tortured and killed their children (McAllister, 1999). The Mothers of the Plaza de Mayo brought the plight of their children and community to the world through their simple (and brave) acts of defiance. The mothers did not need extensive military training, nor did they need to carry arms in order to resist the authorities. It came naturally for them to protect their children and join together as a community.

Process

The process of resistance to the state can take many forms, but some of the most common nonviolent methods include tactics of protest and non-cooperation such as strikes, boycotts, mass demonstrations, destruction of symbols of state authority (such as identification papers) and tax refusal (Galtung & Jacobson, 2000; King, Zunes, Kurtz & Asher, 1999). These techniques have been classified and documented by nonviolence researcher Gene Sharp (1973). Sharp (1971) sees the waging of social and political conflict through nonviolent means as the only solution to the problem of politically inflicted state violence. Sharp (1971; 1973) posits that if there is general conformity, then the ruler becomes all powerful, therefore non-cooperation forms the underlying basis for nonviolent action. Dr. Martin Luther King Jr. (1970) also advocated nonviolent direct action as a means to challenge the state. King (1970) saw the creation of tension as the door to open up negotiations with authorities, such as the use of sit-ins and protests. He saw these acts of disobedience as a challenge to the regime itself and they reinforced the illegitimacy of the structure.

Many proponents of nonviolent action such as Gandhi and King contend that complying with unjust laws is as bad as perpetrating injustice. As already briefly touched on, it could be argued that by paying taxes and accepting government services, citizens are participating through cooperation and silent complicity in state structures that have enabled torture in the War on Terror. Certainly, Thoreau (1970) argued that paying taxes was a form of paying homage to “and support [for] our own

meanness” (p. 17). Therefore, he saw civil disobedience as every person’s obligation. He said:

If the injustice has a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will be worse than the evil; but if it is of such a nature that requires that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong I condemn (Thoreau, 1970, p. 19).

This can be translated into refusing to comply with laws that aid the culture of secrecy and non-disclosure in relation to torture and supporting or becoming a whistleblower. Thoreau (1970) would consequently argue that there is an onus on all members of society not to comply with any laws that perpetuate injustice. This extends to those unjustly detained in places like Guantanamo Bay and other black sites. Whilst one person is unjustly detained, Thoreau (1970) argues that the true place for a just individual is also in prison.

Ultimately, the state is reliant on widespread obedience and compliance to carry out its functions, including violent activities. To a large extent, the exercise of power by the state is dependent on a community believing in the legitimacy of those who hold power, and that the structure itself is legitimate (Boulding, 1999). Remove the legitimacy, and the pillar of support is removed. As one nonviolence theorist contends, “we tend to regard as legitimate those structures from which we feel we can benefit” (Boulding, 1999, p. 12). Withdrawing support for the state is therefore necessary to enact structural change. As the quote by Solzhenitsyn at the beginning of the section suggests, all that is required for violence to go unperturbed is ultimate allegiance to the state, and silent complicity then follows. Accordingly, only when people’s allegiance is turned to their fellow human beings will the state that facilitates torture be subverted.

Whistleblowers who work within the structure of military and intelligence agencies have already refused to comply with confidentiality clauses they were forced to sign,

and leaked information to the public resulting in powerful outcomes.¹¹⁷ In addition, the work of publishing organisations like WikiLeaks have aided in challenging the system by exposing the violence inflicted by the state, the massive abuses of power, and the underlying political machinations that supported these actions. Some have argued that as a result of the releases, the ripple effect continued for many months and contributed to people-power movements, such as the Arab Spring (Chenoweth & Stephan, 2011). These tactics have exposed the illegitimacy of the current structure, and raised awareness about the many crimes against humanity perpetrated in the War on Terror.

The Global Justice Movement

The emergence of the Global Justice Movement (GJM) – commonly referred to in the media as the anti-globalisation movement – has seen a marked change in the way that non-state actors work to achieve structural change and has played a key role in harnessing the nonviolent strategies mentioned above. The goal of the GJM is to achieve change on a global scale, rather than solely a reactionary movement against globalisation and capitalism (Croeser, 2008). The movement has not taken a traditional form that organises itself in a hierarchical structure or a horizontal network. Rather, the GJM is decentralised and comprised of a diverse group of individuals and organisations that are loosely organised by a common goal – equality and justice. For example, *Anonymous*, which was mentioned earlier in the chapter, has played a key role in the GJM.

The initial visibility of the movement took place in Seattle, when concerns about issues such as climate change, privatisation, and the actions of international financial institutions led to massive protests at the meeting of the World Trade

We are the 99 per cent. We are getting kicked out of our homes. We are forced to choose between groceries and rent. We are denied quality medical care. We are suffering from environmental pollution.

We are working long hours for little pay and no rights, if we're working at all. We are getting nothing while the other 1 per cent is getting everything. We are the 99 per cent.

(as cited in Northridge, 2012, p. 585)

¹¹⁷ Former soldiers and guards from Guantanamo have been exposed by the testimonies they witnessed – Chris Arendt, Albert Melise, Brandon Neale, and others. The Guantanamo Testimonials Project included. The Guantanamo Testimonials Project <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project>

Organisation in 1999 (Croeser, 2008). Some scholars saw the protests in Seattle as the “turning point in the history of social movements” (Croeser, 2008, p. 2). In Australia, the protests organised against the Asia Pacific Summit of the World Economic Forum in September 2000, known as *s11*, became the catalyst of the GJM to identify as a movement, rather than uncoordinated individuals and organisations working towards common goals (Humphrys, 2013). Since then, the movement has gone through ebbs and flows given the varying political contexts.

The networking between the individuals and groups that make up the GJM have largely taken place through social media and the internet, as these forums have made organising and networking adaptable and effective. For example, the Occupy movement manifested in global protests and a coordinated social media campaign that raised awareness about the unequal social and economic structure which saw the symbolic rise of the phrase “we are the 99 per cent” (Northridge, 2012, p. 585).

Importantly, the strength of the GJM movement is the decentralisation of power, due to the inclusive and participatory nature of the movement. Organising tactics are more commonly inclusive of models that see stability and structure as exceptional states, and alternatively embrace change as a natural state. Rhizomic networks (Deleuze & Guattari, 1981), for example, focus on the notion that all individuals and organisations are connected, just as tree roots that are connected into a bulb (Chia, 1999). Within the tuber, there may be many different organisations and individuals, but there is no unitary point, and not one specific entry or exit point (Langmans, 2011). The bulbs ripple outwards to network and create more lines of development. There are shared elements, such as direct actions, slogans, communications and tactics, and the emphasis is on action and participatory democracy (Bougsty-Marshall, 2015). When one root is broken or destroyed (e.g. information about torture is censored due to the intimidation of a whistleblower), the idea of rhizomic change is that the root will inevitably grow somewhere else on an old or new line (e.g. an activist will spread information about the censorship over social media). There is no dominant trunk; instead, a rhizomatic network develops and creates the capacity to coordinate actions through omnidirectional connections, and offshoots grow in different directions. For example, a small environmental group may be engaging in direct action against environmental damage caused by military war

games, but its actions are effectively contributing to the peace movement and the work of other anti-war organisations on the other side of the globe by building online presence and political pressure. This results in the creation of complex systems to effectively challenge authority, and the weaving of multiple and diverse political struggles which form a rhizomic movement for change.

The rhizomatic conceptualisation of power also provides the means of challenging the state in the sense that power is no longer viewed as hierarchical, rather, the interrelationships between individuals and organisations can be used to coordinate resistance (Bougsty-Marshall, 2015). The goal of the movement is more action outside of traditional structures and providing alternative modes of influence.

Movements for global justice and structural change have manifested on all corners of the globe and these rhizomic networks, along with tactics grounded in nonviolence, provide guiding principles for the process of change.

Challenges

The move towards structural change requires an acknowledgement of the many debates and challenges faced when seeking to enact transformation. For instance, some believe that the idea of radical social change is utopian and could never be realised. The struggle between realism and idealism has been explored extensively, without much agreement throughout the years (Stegar, 2003). Indeed, the Thomas Hobbes (2016) school of thought posits that where you have self-interested individuals who have different moral codes, they are always drawn into conflict and fear (Layton, 2006). Hobbes (2016) believed that only way to subvert conflict and fear is to create an authority that enforces order through coercion. Similarly, the Machiavellian theoretical lens sees that without laws to govern people they will not have purpose (Stegar, 2003). Machiavelli (2011) perceived people as inherently lazy and corrupt, so they need the state or a strong leader to govern and guide them to virtue. These viewpoints have provided some influence in relation to arguments surrounding the individual barriers to change. But there are also solid counter arguments which postulate that even if some individuals are not innately good, humans are social beings, and therefore cooperation for the common good could become a natural way of being (Layton, 2006; Perlin, 1979).

For example, nonviolent methods of resistance have been utilised successfully by some torture-prevention specific organisations through the mobilisation of different individuals and sections of the community that are united in their condemnation of torture. For example, the US group ‘Witness Against Torture’ regularly engages in protests in front of the White House and ‘fasts for justice’, in order to raise awareness in the general community about the prisoners in Guantanamo and those elsewhere who continue to be tortured. Similarly in Australia, ‘The Justice Campaign’ holds events and engages in social media campaigns that raise awareness about the plight of torture survivors and has continued to call for accountability.¹¹⁸ These organisations comprise people from many different walks of life, including barristers, military personnel, politicians, students, scientists, artists, and peace activists. They also coordinate with other individuals and organisations that form part of the GJM. The organisation Non-Violent Peace Force has also engaged in protecting individuals who are effected by violent conflict and has used many of the methods of resistance outlined above.

But these organisations have faced major social and political barriers, and despite raising awareness, the limited impact on broader change can be attributable to several factors. For a start, not enough people have been mobilised to counter the torture system. The political environment has seen authorities perfect their ability to use the tactics of inhibiting outrage about torture, so fewer people appear to be willing to engage. The phenomenon of armchair activism (McConnell, 2012) has also contributed to citizens clicking online petitions and feeling that this is sufficient to voice their opposition to torture; however, it has not been enough to bring about systemic change. Large mobilisations of people are difficult when non-state terrorist attacks are hyped by governments and the media, and the broader community is in a state of constant fear.

There are also internal organisational barriers to change. The many different approaches to advocacy and political affiliations within organisations have led to the splintering of some sections of the GJM and anti-torture movement. For example, the use of violence by some anti-statist activists has led to the nonviolent proponents

¹¹⁸ I founded The Justice Campaign in 2010.

disengaging with the GJM movement at some level.¹¹⁹ The lack of consensus and political disunion in some organisations has also caused some splintering of the movement. In addition, when connections and networking with other groups have become inhibited, the movement has inevitably faced significant challenges.

The social barriers to structural change are also significant, and it is certainly acknowledged that building a movement that promotes nonviolent social change in the direction of the abolition of the state requires an enormous cultural shift. However, patterns of behaviour, such as obedience to authority, can be unlearned, just as they were learned, and nonviolent activists would argue that the community could unlearn the belief that violence and war are the only means of conflict resolution. Key to this is cultural and social change and the introduction of nonviolence as a way of life. Anthropologists and behavioural ecologists have established the factual basis of John Locke's (1965) theory which asserts that people can live without the sovereign, and that humans are essentially rational beings. The crux of this theory in practice, however, is that those individuals must forgo immediate selfish goals in order to further support the needs of the community (Locke, 1965).

Without state sponsorship, certain forms of violence and torture would most likely still exist, but at a lower level, without legitimisation and structural support. It is postulated that there would be a cultural shift in the way that violence is constructed on a societal level. To further explain, in the present statist context of Australia and the US, some forms of violence are seen as legitimate actions of the state and conflict is seen as inevitably violent. If the ideology of legitimate violence is removed from day to day rhetoric, and structures do not facilitate violence, it would be seen as an aberration rather than normalised. It therefore follows that the likelihood of torture and other systematised violence would be diminished.

Despite the obstacles, the sweeping manifestation of the deep state in a post 9/11 world has inspired the search for a radical and nonviolent response. Whilst the state exists, so do the mechanisms that support torture and violence, including the regular military, courts and elected officials. Undermining the state's pillars of support and

¹¹⁹ It must be said, however, that government agents have infiltrated groups and initiated violence at protests to give activists a negative public image (Lubbers, 2012).

choosing to not comply with a system that facilitates torture and violence is a nonviolent approach to this deep-seated structural and social problem. This means refusing to accept torture in the current structure, and insisting that those responsible be made accountable.

Professor of rhetoric Judith Hall (2010) eloquently states “We may well be formed within a matrix of power, but that does not mean we need loyally or automatically reconstitute that matrix through the course of our lives...” (p. 167). Making the choice to live peacefully and challenge those systems that inflict suffering on others, means taking a leap of faith and being brave. Indeed, Hall (2010) suggests “Non-violence is not a peaceful state, but a social and political struggle to make rage articulate and effective – the carefully crafted ‘fuck you’” (p. 167). It is a choice to conform to a system and obey authorities that use violence as a tool of control and have made violence a norm. As a community, these norms can be changed with a little time and effort, and it is upon the whole community to ensure the ‘fuck you’ is done peacefully, thoughtfully, and in a considered and effective way.

Conclusion

This chapter explored some of the strategies that can be employed to counter the tactics used to inhibit outrage at the injustice of torture. Several countermethods were outlined including methods that expose torture; validate the survivors and victims of torture; challenge the reinterpretation techniques of lying, minimising, blaming and framing; mobilising public support and refusing to be intimidated by authorities who seek to stifle support for victims and whistleblowers. These methods have been successfully used in previous situations where blowback against authority has occurred, such as the beating of Rodney King, and the release of the photos depicting the torture of prisoners at Abu Ghraib. In the case of Abu Ghraib, the reputation of the US Government was severely tainted (Gray & Martin, 2007). However, blowback does not result in justice for the victim.

The success of the countermethods is also dependent on communicating the message at the right time and when the public is open to receiving the message. Part of this openness involves the capacity for broader empathy, which has been an ongoing

challenge in the political and social environment of the War on Terror, and given the overarching structure.

Because violence such as torture is structurally embedded and supported through broad networks and institutions, one way to effectively address the roots of state inflicted torture would be to abolish the deep state perhaps as part of a transition to egalitarian alternatives to the state more generally. Methods of nonviolent action are an effective way of addressing the situation, having been proven to be effective in removing numerous autocratic and oppressive regimes that engage in torture, including Gandhi's *satyagraha* against British rule over India, and other people power movements that have taken place in all corners of the world (Chenoweth & Stephan, 2011).

Promoting nonviolence to bring about structural change is one way to undermine the capacity of states to engage in torture, and consequently society would be in a position to restructure itself more equally and in a way that supports peace with justice. Despite the challenges of enacting broader social change, it is worth striving for a world that is not reliant on violence and coercion to achieve social and political goals. In the end, it is a choice whether to conform and accept that torture is a norm in the War on Terror. The choice is upon all members of the community to comply with the state, or resist the injustice that it creates.

Chapter 8: Conclusion

We're walking straight into 1984... The way things are going there will be a large group of people in the world who won't know what freedom is and therefore won't have the desire to defend it – Christine Assange, Advocate and mother of WikiLeaks founder Julian Assange (personal communication, 3 July, 2016).

Torture was not something that 'just happened' as those in authority would like the public to believe. It was not a momentary lapse of judgement, nor the result of just a few 'bad apples'. The torture that occurred as part of the War on Terror was systematic, calculated, cruel, and reached many corners of the world. Using the façade of national security and the ostensible moral high-ground, Western leaders not only justified their use of torture, but ignored the disastrous legacy for individuals, families and the broader community. Torture carried out as part of the War on Terror should be publicly named for what it is – a form of terrorism.

Using the Backfire Model (Martin, 2007), sometimes termed an Outrage Management Model, an analysis of Australian newspaper articles spanning 2002-2012, sought to explore whether there was any evidence indicating that authorities and the media used tactics to 'inhibit outrage' at the injustice of torture in the War on Terror in Australia. The analysis revealed that authorities and the media engaged in the widespread use of tactics to reduce outrage in relation to torture including; cover-up, devaluing the person, the reinterpretation of events, the use of official channels, and the intimidation of victims, or reward of people involved in torture. The most prominent tactics used by authorities are cover-up in the first instance, then devaluation of the torture survivor or victim, and reinterpreting torture, often in conjunction with other strategies to reduce outrage.

The methods of inhibiting outrage at injustice were utilised by both the Australian and US Government, and the mainstream media which, at times, unquestioningly regurgitated press statements containing fabrications and facilitated propaganda campaigns. Some exceptional articles over the years condemned torture, and some journalists pointed out inaccuracies stated by officials, however, these articles were

largely overshadowed by those which repeated official narratives or published false and defamatory information. In the early years of the War on Terror, US and Australian Government officials, as well as their agents, viciously denigrated those detained in US custody. Despite the absence of evidence or trials, much less convictions, men, women and children were labelled as terrorists and evildoers who wanted to do Westerners harm.

The cover-up of torture was also significant and extensive. Authorities went to great lengths to hide what occurred in US detention facilities, and to those subjected to extraordinary rendition. This included destroying and removing records, obfuscating investigations, refusing to release formal reports and preventing independent oversight. There is evidence to suggest that authorities even removed DNA evidence from the bodies of men who had been killed at a secret camp in Guantanamo.

Disturbingly, the comprehensive attempt to discredit and devalue the humanity and experience of the torture victims and survivors was highly effective. Repeatedly, torture was reinterpreted as ‘not that bad’, and the focus was shifted off the torture, to the accusations levelled against them, or whether they were guilty or innocent. Torture survivors/victims were effectively labelled as liars and unworthy of respect and dignity. Their torture was minimised, degraded and they were cast as deserving of any ‘mistreatment’ they endured. Torture victims’ testimony was discredited even before it was heard; and even when it was heard, it was cast aside as ‘tall tales’ or ‘delusions’, particularly if payment was involved, or if survivors chose to publish books rather than go through mainstream journalists.

Similarly, the US and Australian Government’s and their agents reinterpreted events to suit their own political agendas. Innocuous terms such as ‘enhanced interrogation’, a ‘dunk in the water’ and ‘single celled occupancy’ were used by officials in order to minimise and reframe torture. There is evidence that the US, British and Australian Government’s shared speaking points and otherwise hid or disguised the perpetration of torture, and their involvement, in a methodical, coordinated and systematic way. The issue of torture was framed in the public realm as relevant only to the extent of whether the person was guilty or innocent and hence, whether they deserved to be treated in that manner. The focus of the articles was the accusations levelled at the victims/survivors, rather than the crimes against humanity

perpetrated against them. The Australian media largely reported official statements as news, and largely failed to question the details or veracity of the official statements.

Official channels were also employed in order to minimise and inhibit outrage. Numerous investigations were ordered into allegations of ‘mistreatment’, however, the investigations were largely useless and typically conducted by those who were either accused of partaking in torture, had links to the government or those accused of perpetrating torture, or were involved in the cover-up. In Australia, the only investigation into the detention of one Australian held in Guantanamo completely narrowed the scope of its investigation to the treatment he endured outside the custody of the US Government, and the final report was censored. The other Australians did not even get that far. Even responses to FOI requests have been used to present the façade of transparency, when in reality, those involved in the torture program continue to censor documents, or prevent them from being released on technicalities, such as State Secrets, or national security grounds. The courts have also provided little, if any, relief for victims and survivors.

Numerous examples demonstrate the lengths that Australian and US Government officials and their agents went to in order to intimidate prisoners who wanted to challenge their treatment. It was apparent that successive court cases, which lasted for years, and attempts to deny the public’s ability to hear torture testimonies, was used as another means of stifling outrage. Blatant intimidation included a US Government imposed gag-order on David Hicks, the use of control orders and the attempted prosecution of those who had given interviews about the extent of their torture. Torture whistleblowers have also been targeted. Former Guantanamo guards have been threatened and subjected to blatant discrimination due to their outspokenness about what they saw and heard. They have been labelled as traitors for speaking out. Whistleblowers such as Chelsea Manning have been held in oppressively cruel conditions and prosecuted for disclosing the truth about torture. Former CIA agents and government officials such as Edward Snowden, John Kiriakou and Craig Murray were subjected to a number of tactics in order to discredit them, including being labelled as criminals by US, UK and Australian Government authorities.

Meanwhile, those who were involved in the US torture program and those in Australia who were involved in the cover-up, have been rewarded and promoted into higher positions of power and influence. Some have been shuffled from one department to another, or into private contractor roles in order to continue exerting their influence. Indeed, officials who ordered torture have been open about their involvement in war crimes, yet have been provided with diplomatic immunity, and enjoy comfortable taxpayer-funded retirements. The contrast is striking.

The tactics of outrage management employed by officials and the media were therefore effective, and blowback only occurred in a few situations, most notably, when the photos depicting the torture of prisoners at Abu Ghraib prison in Iraq. Overall however, the tactics were successful in protecting those at the top.

The more disturbing element to arise from this research is the emergence of a broad structural network that not only supports the use of torture, but aids in its cover-up. Elements of the torture support structure work synchronously to carry out ideological, economic, practical or political functions. The politics of terrorism served as ideological support for the perpetration of torture, and was used as a political tool to capitalise on fear and cause division. The reluctance to call far-right murderers terrorists, compared to their Middle Eastern counterparts was described, and the targeting of certain minority communities was used as a diversionary tactic to shift attention off state inflicted violence and structural issues. This is intimately related to the legitimisation of certain types of violence, whether at the hands of the state in war, or through the torture of those they deem terror suspects. Although the anti-torture stance is predominately assumed by those to the left of the political spectrum, it was evident that both sides of politics have served to legitimise torture in one way or another. Using torture and terrorism as a political tool has only served to further divide and shift focus off the important issues relating to torture.

The notion of the deep and shallow state is a useful concept in understanding the two operating systems that are apparent in the War on Terror, and the practical and economic support provided to the torture support network. The shallow state consists of elected government and other institutions such as courts, and the deep state is a system that does not respond to civilian leadership, and is mostly comprised of intelligence agencies, military contractors and private corporations. Since 9/11,

torture was used as an instrument of the deep state, through covert operations such as the extraordinary rendition program and extrajudicial assassinations. The secrecy and lack of accountability are hallmarks of the operations of the deep state, and this is exemplified by the covert torture programs that have taken place since 9/11. This relates to the link between the state and the surge in the use of private military and security companies as part of the rise of militarism. The incestuous links between private military contractors, politicians and the media present a disturbing picture of the level of collusion between institutions, and an understanding of systematic nature of torture and its cover-up.

The establishment of mass surveillance systems as another manifestation of the deep state was also explored as a tool that aided in the tactics of preventing outrage at torture and its cover-up. The revelations of Edward Snowden and WikiLeaks have exemplified the far-reaching implications of the mass surveillance and intelligence webs that are now functioning globally. Consequently, the targeting of whistleblowers has also been significant as a result of the torture and war crimes that were exposed. The use of PSYOPS and expansion of cyber-warfare was also illustrated, along with the shift towards remote warfare rather than hand-to-hand combat, which facilitates new human rights abuses. The lines have been blurred between winning hearts and minds and manipulating audiences to believing certain events are taking place. The use of US military funded software that creates false online personas to counter dissent has been one of the overarching tactics to support the minimisation of outrage at the injustice of torture.

Given this broad reaching and devastating situation, the countermethod tactics that formed part of the Backfire Model (Martin, 2007) were presented as a means of addressing torture including; exposing information about the injustice, validating the targets of injustice, interpreting the events as unjust, mobilising public support and either avoiding or discrediting official channels and refusing to be intimidated and exposing the intimidation (p. 7). These tactics have been useful in countering the vast use of outrage minimising tactics used by authorities, including the blowback as a result of the release photos depicting torture at Abu Ghraib.

Nevertheless, given that the structure serves to maintain the current order which legitimises state-inflicted violence, and supports systems of torture and cover-up, one

option to address this would be to abolish the state – the goal being a society based on egalitarianism and nonviolence such as Gandhi’s anarchist *sarvodaya*. It is essential that the process of change must be grounded in nonviolence, utilising the tactics of noncompliance which have already been established as effective in several people-power movements over the years. It is recognised that structural change is a challenge, particularly given the political and social environment and reliance on the structure of the modern state. Regardless of these debates, a radical approach in relation to torture prevention is essential. Concerted efforts to disobey the current torture facilitating system are the only way to remove the pillars of support for torture. Only when individuals turn their allegiance to each other rather than the state, will the possibility of a torture-free world ever be possible.

The implications of this research are therefore significant. The collusion between media, government and those who operate outside the political and legal structure, and without oversight, results in torture being legitimised and supported. The network of support for torture theorised in the research may also be applied to other contexts of state-inflicted political violence, such as genocide. For example, the same methods have been employed as a tool to perpetrate torture and genocide in a number of state-enacted conflicts around the world, such as South America and in some African nations. In addition, it is clear that the state has become skilled at hiding its activities through the use of ‘clean torture’ that leaves no physical marks, and the network created to facilitate and cover-up the criminal actions of the state. The use of political violence by non-state actors (conventionally called terrorism) has only served to legitimise the counter-violence of the state, and indeed, the cycle appears to be endless.

But what does this leave for those who have been tortured as part of the War on Terror? There is little justice for someone who has been tortured. When reflecting on his torture in CIA black sites, Australian torture victim and survivor, Joseph Thomas, remarked, “They took everything from me. My dignity was stripped; I was used, torn, humiliated, lied about and smeared. Nothing they will ever do can give back what they took from me; nothing will ever change what they did” (personal communication, 12 September, 2015). Behind all of the newspaper headlines, official remarks and court cases discussed in this thesis are the harrowing

experiences of people whose lives have been forever stained, and many are still suffering. The collective destruction of their memory and experience as a result of widespread denial is public and painful. The reality is that whilst the state, and agents of the state, perpetrate and cover-up their crimes against humanity, it is the victims who are left with the personal legacy of torture.

Yet, this legacy does not end with the victims/survivors. It is inevitably the broader public that choose to endorse, accept or resist the torture system that was used to destroy so many lives, and extinguish the many freedoms that have taken years to establish. Torture is one of the most vicious forms of human cruelty, and change will only occur if enough people join together and resist.

In the end, we will remember not the words of our enemies,
but the silence of our friends – Dr. Martin Luther King Jr. (1986).



Figure 23- Artwork entitled 'Guantanamo' (Source: Latuff, 2013)

Postscript

I would bring back a hell of a lot worse than waterboarding... – Republican Presidential nominee Donald Trump (as cited in McCarthy, 2016).

Since the bulk of analysis in this thesis was written, a number of events have occurred that are worth mentioning. A US election is to be held in a few months, and whilst the hype over election promises are front and centre in the media, questions still remain about what outgoing President Obama will do with the 61 men left in Guantanamo. Former and current prisoners' experience of torture continues to be discredited by officials. In June 2016, the latest revelations of torture and ill-treatment saw a US military commander state publicly that "There was no need to investigate it. We didn't deem it was credible" (as cited in Johnson, 2016). Meanwhile, Congress has blocked transfers by passing legislation that prohibits Obama from releasing any more prisoners (Demirjian, 2016). However, Congress have allowed funds to carry out repairs in Guantanamo, so it is clear that the torture facility is set to remain open for years to come. It is still unclear as to why Obama does not use his authority to veto the *National Defense Authorisation Act* (USA) and close Guantanamo regardless of Congress blocking funds. He has the authority to do so, he signed an executive order in 2009, he just chooses not to.

The US Military Commissions are still in the process of holding so-called 'trials' for men in Guantanamo and some embedded US journalists are continuing to parrot US Government propaganda by calling them 'war courts', as if they hold some legitimacy (Rosenberg, 2016). Men who have been subjected to torture, cruel, inhuman and degrading treatment are still being prevented from clearing their names in a fair system that precludes the use of evidence obtained under torture or 'coercion'. David Nevin, an attorney for some of those accused of involvement in 9/11, has accused Judge Col. James Pohl, of being involved in destroying evidence after he granted an order that allowed the prosecution to destroy classified evidence crucial to reconstruct his client's torture (Eakin, 2016).

Under the *Military Commissions Act* 2009 (USA), a "no name motion" allowed the prosecution to apply to the Commission to grant the US Government permission to

destroy evidence related to a CIA black site that was used in the torture of several 'high-value' prisoners (Garcia, 2016). It was also revealed that the FBI had tried to infiltrate defence teams to build 'informant' relationships, and Judge Pohl ruled that he did not think this posed a conflict of interest (Froelich, 2015). Military Commission hearing audio feeds have been muted by the CIA when any discussion of torture or the CIA rendition programme has occurred (Schwartz, 2016). US officials are still trying to prevent those subjected to torture from testifying in Military Commissions proceedings (Pitter, 2016), whilst at the same time petitioning the Commission to allow 9/11 victim's family members to testify prior to the 'trial' even starting, even before guilt or innocence is established (Feldman, 2016). Commissions have been marred with ongoing injunctions and prohibitions preventing prisoners and defence lawyers from discussing torture (Ledermen, 2015). If these trials had been held in article three courts on the US mainland, they would have concluded by now; instead they are only at pre-trial stage, almost 17 years after the event.

Lawyers defending the men are also under increasing pressure after the military pushed for new rules seeking that their legal representatives live at the prison camp for the duration of trials, which can last years (Huffman, 2016). One legal advisor for a Guantanamo prisoner has sought whistleblowers status after being removed from Guantanamo for reporting three officers for defying a court order (Huffman, 2016). Guantanamo is still a dangerous place for whistleblowers.

The situation in relation to the treatment of men in Guantanamo is desperate. Men have been protesting their treatment in the form of a long-term hunger strike. A core group of around 12 men have refused food, one man, Mohammed Ghulam Rabbani is in his 11th year of hunger striking (Ryan, 2016). To encourage the men to eat, reports suggest that they are left strapped to what was described by the manufacturer as a 'padded cell on wheels', for extended periods, and forcibly tube fed. Force feeding entails a tube being forced up the nose, and down into the stomach. The procedure is conducted without anaesthetic, and has been described as amounting to torture by the World Medical Association, amongst others (Marion, 2014). Documents obtained under US FOI legislation demonstrate that the medical restraint of prisoners has been used as punishment for those who refuse to eat (Kaye, 2014e).

Although the military has recorded the numbers of force-fed prisoners, they refuse to release them to the public. Those who have seen recordings of the force-feeding have said that they were so disturbing they found it hard to sleep.¹²⁰ However, it is now formal US policy to prevent the public from knowing the true numbers of hunger strikers in order to curb any favourable support for prisoners (Leopold, 2013). Despite the media blackout ordered by US authorities, it is clear that some people detained in Guantanamo continue to participate in an ongoing hunger strike in order to protest their treatment (Leopold, 2013). The UN Special Rapporteur on Torture is still being denied unrestricted access to Guantanamo. Juan Mendez has repeatedly sought access to the detention facility over the years, however, the US Government continues to prevent him from having private, unmonitored access to prisoners (Pitter, 2016).

After a long fight, Guantanamo prisoner Mohamedou Slahi published a best-selling account of his time in Guantanamo (Slahi, 2015). The account is nothing less than harrowing, but at least the public have the chance to read a firsthand account of his torture and time in Guantanamo. Even though Slahi has been cleared for release, he is still languishing in Guantanamo (Ackerman, 2016).

Whilst more and more information has been leaked to the media, there is still a concerted effort to hide torture. Former Guantanamo guard Joseph Hickman wrote a disturbing and powerful book about the events he witnessed in Guantanamo, including the deaths of the three men that were labelled by the US Government as suicides (Hickman, 2015). He has paid a high price for speaking out, and remains a target for those who want to discredit any allegations of US Government misconduct. Chelsea Manning, the heroic US army intelligence operative who released evidence of war crimes to WikiLeaks, is still languishing in Fort Leavenworth prison and, in July 2016, tried to take her own life (Free Chelsea Manning, 2016).

Former guards still tell me how their jobs are regularly placed in jeopardy because they have spoken out against Guantanamo, and spoken up for the victims of torture.

¹²⁰ One man, Ahmed Rabbani, who has been held without charge for over a decade, contracted a chest infection which in-turn caused him to vomit blood. Rabbani described them repeating the procedure on him, although it left him “screaming in pain” (Marion, 2014, p. 1).

But it is the personal cost that never makes it to the media. I have had long conversations with former military personnel who are wracked with addiction, have taken out their PTSD on their loved ones, and who are suffering because of what they have seen, and sometimes done. It will take a number of years for the full extent of the damage to be known and if history repeats itself, those who sit in their offices ordering and covering up atrocities, will come out unscathed whilst everyone else suffers in silence.

Several court cases concerning rendition and torture in the US have been dismissed on the grounds that judicial precedent prevents cases from being heard in US courts, or because of immunity provisions. The ACLU filed a case on behalf of Amir Meshal who was rendered from Kenya to Somalia and Ethiopia before being returned to his family in 2007 without being charged with a crime (ACLU, 2016c). Although the case was dismissed, it is being appealed to the US Supreme Court. A lawsuit brought by four Iraqi men against CACI, the private military contractor that tortured them at a hard site in Afghanistan, was dismissed in 2009. Similarly, a class action lawsuit on behalf of prisoners who were tortured at Abu Ghraib prison against CACI and Titan Corporation (*Saleh, et.al. v. Titan, et.al.*), was dismissed in 2011 on the grounds of “battlefield pre-emption” and because claims of torture could not be brought against private contractors because they are not ‘state actors’ (The Center for Constitutional Rights, 2011).

After years of litigation, a lawsuit against Adel Nakhala and L-3 Services (formerly Titan Corporation, now Engility), a private security contractor was settled. The CCR filed the complaint on behalf of 72 men from Iraq who were subjected to “horrific acts of torture at the hands of these contractors and certain government conspirators” (The Center for Constitutional Rights, 2012, para.1). The men were subjected to “rape, threats of rape and other forms of sexual violence; electric shocks; forced nudity; hooding; isolated detention; and being urinated on” (The Center for Constitutional Rights, 2012, para. 3). One of the men witnessed a fourteen year old boy being forcibly held down by Adel Nakhala, he was then brutally raped with a toothbrush. Despite this, the private contractors have never been held to account in a criminal setting.

After years of legal battles in US courts to hold Blackwater contractors to account, in October 2014, a federal jury in Washington DC finally convicted some of the contractors for the Nisour Square massacre. Blackwater guard Nicholas Slatten was found guilty of first-degree murder, and Paul Slough, Evan Liberty and Dustin Heard were found guilty of voluntary manslaughter (Scahill, 2014). It is unlikely that they will ever spend a day in prison however, as their lawyers are appealing the decision.

The Center for Constitutional Rights (CCR) continues its fight for accountability in Europe where it has filed a complaint on behalf of 12 torture victims in Germany under the universal jurisdiction principle (The Center for Constitutional Rights, 2014). The case asks the German prosecutor to criminally prosecute high ranking officials in the Bush Administration for ordering war crimes (The Center of Constitutional Rights, 2014). The torture victims in this case were held at sites in Iraq and Guantanamo. The case is yet to be decided. The CCR has started several cases under the universal jurisdiction principle in Spain, Switzerland and Canada. Lithuania and Romania also have trials pending at the European Court of Human Rights over their role in the CIA rendition program ("Guantanamo prisoners taking Lithuania to ECHR over suspected CIA detention centre", 2016). The case is yet to be heard, and it is unlikely to resolve soon given the delays employed by these governments to stifle outrage. Whilst the European Court of Human Rights found the Polish Government guilty of hosting a CIA prison on its soil, it is appealing the decision in order to delay having to openly declare its involvement (Lowe, 2014). The case has already been running for six years.

In April 2016, a US federal judge ruled that two psychologists, Bruce Jessen and James Mitchell, could be sued for their role in the CIA torture program (Watt, 2016). This was a landmark decision for torture survivors, as the psychologists involved in the program have been largely left unaccountable prior to this decision. The case has been brought by Suleiman Abdullah Salim, Mohamed Ben Soud and the family of Gul Rahman, who died whilst in CIA custody in Afghanistan. Time will only tell whether or not they will be successful in holding those complicit in their torture, and in Rahman's death, to account, though the Backfire Model suggests it is unlikely.

More documents released in the US point to intelligence agencies holding people in US custody, even when they knew they were never involved in terrorism (ACLU,

2016a). The CIA released a cache of documents under FOI in June 2016 that demonstrate the deplorable treatment and torture of Khaled El-Masri, a German citizen who was disappeared, tortured and held for over four months before being released as a result of “mistaken identity” (Dakwar, 2016). Included in the documents was a “death report” on Gul Rahman that detailed his treatment including being placed in diapers to “humiliate the prisoner for interrogation purposes”, or they are left in their cells naked (ACLU, 2016, para. 4-5).

Transcripts of Guantanamo prisoners graphically describing their torture were also released to the ACLU in 2016. Obtained after a seven year battle with US authorities, the documents contain testimony from Abu Zubaydah, who the US Government admitted they were mistaken in their assessment of him as a top al-Qaeda operative, and who has been held without charge since 2002. The first-person account of his torture at the hands of US agents released is harrowing and includes details about being waterboarded, shackled to a board and a chair naked and in freezing temperatures, being beaten, and being placed in what he called a dog box which was two and a half feet long, wide and high (Bonner, 2016). In one document Abu Zubaydah recounts:

They shackle me completely, even my head: I can’t do anything. Like this and they put on cloth in my mouth and they put water, water, water. Last point before I die they stand [via language analyst] bed they make like this [make breathing noises] again and again and they make it with me and I tell him ‘If you want to kill me, kill me (ACLU, 2016b, para.5).

Not one official has been held to account for any of this.

JSOC and other Special Forces personnel continue to get away with torture and murder – literally. A report by Jeremy Scahill notes that an internal US Defense Department investigation found that the killing of Afghan children and pregnant women was an “appropriate” use of force (Scahill, 2016). The use of official channels and investigations that seldom hold anyone to account, and attempt to give the appearance of justice, continue to pervade the military landscape.

The Obama Administration released supposed numbers of people killed by drones, or what they term ‘kinetic’ strikes. The Administration claims that between 64 and

116 people have been assassinated by drones so far, however, those numbers exclude deaths in Iraq, Afghanistan and Syria (Shah, 2016). Human rights groups however have claimed that these numbers are a gross distortion of reality given the evidence from people on the ground (Shah, 2016). It was also recently revealed that Hillary Clinton, the Democratic nominee for the upcoming US election, was ordering drone strikes in Pakistan from her mobile phone (Priyadarshi, 2016). It has been reported that the FBI has emails in its possession that point to CIA drone strikes that are responsible for killing hundreds of people, including 200 children. Given the lack of accountability for any officials, it is unlikely that she or anyone in the Administration will be held to account for the murders.

More information continues to come to light about the FBI setting people up to commit terrorist acts in the US. According to Aaronson (2013), nearly half of cases between November 2001 and 2010 involved informants with criminal backgrounds. Aaronson (2013) also revealed that the FBI has preyed on the mentally ill and people with intellectual disabilities and tried to coax them into committing terrorist acts. It was also revealed in 2016 that Omar Mateen, the man who shot and killed 49 people in an Orlando gay and lesbian nightclub, was also unsuccessfully lured by the FBI into committing a terrorist act three years prior (Rodriguez, 2016). The question remains whether Mateen would have carried out the murders if he did not have the idea implanted in his mind. Coincidentally, Mateen worked for the mega security firm G4S, which once operated in Guantanamo (Shen, 2016).

Mamdouh Habib is the only Australian who was subjected to torture in the War on Terror to have a limited investigation opened into his case and to be compensated. The remaining former prisoners are left with the long-term scars of torture, both physically and psychologically. The Australian Government is yet to hold an investigation into its involvement in torture that occurred to its citizens, and it is unlikely to occur given the political situation.

The Turnbull Government has introduced a fifth tranche of counter-terrorism laws in Australia, some of which propose the indefinite imprisonment of individuals convicted of terrorism related offences (Owens, 2016). Turnbull said “the existence of post-sentence preventative detention as a measure will serve as a real incentive for

those imprisoned for terrorist offences to reform” and that he thought the measures were “proportionate” (as cited in Owens, 2016).

The heavy redactions of documents continue to remain an issue for those seeking information under FOI laws. The FOI requests I have submitted over the past ten years have been met with constant delays. I am still waiting for documents relating to torture that the office of Prime Minister and Cabinet have sought to censor for around five years. The Department of Defence (DoD) continues to block FOI requests into 4 Squadron and JSOC’s activities on Australian soil on ‘national security’ grounds. The DoD will not even confirm the existence of documents. After several internal reviews, and the case being passed to the Information Commissioner’s office, as of July 2016, it is being appealed before the Administrative Appeals Tribunal in Sydney. Interestingly, I have had more success in obtaining documents from the US. I have several cases for documents pending against the CIA, FBI, State Department, Department of Defense, and the Department of Justice and, little by little, more is being released. Ironically, I have found out more about the Australian Government’s role in the detention and treatment of prisoners from the US, than the Australian Government. I cannot help but consider that FOI laws are just used as another way to give the appearance of justice and transparency.

The people of Iraq, other parts of the Middle East and the horn of Africa are continuing to deal with the rise of ISIS. Disturbingly, the founder of the so-called ‘Islamic State’ was held in the US torture facility Camp Bucca in Iraq in the years prior to the rise of the violent organisation, and its members subsequently dressed their Western victims in Guantanamo-style orange jumpsuits, and used CIA torture techniques on them before executing them (Queally, 2014). This is a graphic illustration of blowback from torture.

Sadly, over a decade on from 9/11, families remain broken, and no one has any sense of justice. The legacy of state and non-state terrorism remains.

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